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**THE
FIRST SUPPLEMENTARY REPORT**

OF

**JUSTICE K. N. SAIKIA COMMISSION OF INQUIRY
ON THE SECOND GROUP OF EIGHT CASES**

ON

SECRET KILLINGS

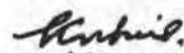
SUBMITTED TO THE GOVERNMENT OF ASSAM

ON

DECEMBER 7th, 2006

SCHEME OF THE REPORT

The Report is designed as one continuous Report, submitted in different volumes each containing Part I- Introductory and Part -II Individual cases. The Supplementary Reports will be combined into one complete Report. On completion, all the volumes will constitute the complete Report. Part I and Part II contents of all the Reports will be treated as continuous. The Part I- Introductory paragraphs, and Part II being the Individual cases, have been numbered serially, so as to form one complete Report... .


(K.N. Saikia)
Commission

**FIRST SUPPLEMENTARY REPORT OF
JUSTICE K.N. SAIKIA COMMISSION OF INQUIRY
ON THE SECOND GROUP OF EIGHT CASES**

(Submitted to Government of Assam on December 7th 2006).....

By Notification No.PLA 331/2005/2 dated 3rd September 2005 in continuation of the earlier Notification No.331/2005 dated 22.8.2005, the Governor of Assam was pleased to order that this Commission of Inquiry shall inquire into any other incidents of killings under similar circumstances which occurred during the period from January 1998 to 2001. This second group of eight cases are squarely covered by the said Notification, these having been cases of secret killings which occurred during the period prescribed thereby. The Commission has, therefore, decided to inquire into these cases; with intimation to the State Government, and submit this Continuing Report for consideration and necessary action.. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

“(a) Circumstances, in each case, leading to the killing of the victims of these cases.

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killings

(e) To make recommendations to prevent recurrence of such killings; and .

(f) Any other matter related to or relevant to the purpose of this inquiry.”

Confirmation of the findings arrived at in the First Group of Seven cases.- Some of the common characteristics and findings in this Second Group of Eight cases are the same as those of the First Group of Seven cases, and, considered with the evidence in these cases, also clearly confirm all the findings of the First Group of Seven cases. The additional characteristics found in this Second group of Eight cases are: 1. The parties boldly naming of some SULFAs as perpetrators in some of these cases; and. 2. The then Police authorities prematurely returning some of the cases in F.R.(Final Report) without finding any clues, and without even suspecting anybody as culprits. This may have been an abuse of the process of the Criminal Court. It may also be noted that the oncoming Third Group of cases also may reveal some SULFAs being boldly named by respective parties in course of evidence, thereby doubly confirming the unholy nexus between the then concerned Police authorities and the concerned SULFAs in secret killings in the process of Ulfocide, that is, deliberate killing of ULFAs and their families and relatives, executing them for their “status offences” of belonging to ULFA and ULFA-related families, without their committing any guilt or offence, and pursuant to remote-orchestration by the State, in flagrant violation of their Constitutional, Legal and Human Rights.

In this group of cases also the Commission was ably assisted by Dr. V.K. Phukan, Sr. Advocate, and Shri Diganta Gogoi, Advocate, as Senior and Junior counsel for the Commission, respectively;

and Shri P.K. Muusahari, Senior Govt. Advocate, Assam, and Shri Dhanesh Das, Junior Govt. Advocate and Additional Public Prosecutor, Assam..

(8)

SHRI SUBARNA RABHA KILLING CASE

Dhoopdhara P.S. Case No. 46/98

(Date of occurrence. 25.8.98)

By this Commission's order dated 5.4.2006, by virtue of the authority conferred on it by the Government of Assam's Notification Nos. No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No. No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry. By virtue of the aforesaid Notifications the Commission is to inquire into, in each case. the following terms of reference, and any other related and relevant matters with recommendations, if any, namely:

“(a) Circumstances , in each case, leading to the killing of its victim(s).

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)

(e)To make recommendations to prevent recurrence of such killing(s)

(f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the killing of Shri Subarna Rabha.

On 26.8.98 FIR was lodged by Shri Prasanta Kumar Rabha, son of Shri Subarna Rabha of Deodharbhita village, at about 9.30.A.M. at the Dhoopdhara Police Station, to the effect that at about 12 midnight intervening between 25th and 26th August, some assailants lifted his father Shri Subarna Rabha from his house and killed him on the road leading to Gathiapara village and left.. This they could confirm by going to that place on information received from some persons. Shri Subarna Rabha's wife Smti Phuleswari Rabha deposed that at the time of the incident her husband, Shri Subarna Rabha, was aged about 58 years, a cultivator, and that in the midnight of 25.8.98, at about 12.30 A.M. while all the inmates of the house were peacefully sleeping in their own Deoghar -vita house, about 5/6 persons, in army dress and armed with short pistol-like weapons, came to their house and knocked at their door; and when being awakened she and her husband Subarna Rabha opened the door and came out, those persons said: *Chalo, Chalo* , but they refused to follow them, they dragged her husband Subarna Rabha to the parking vehicle near by and took him away. At this Phuleswari Rabha raised hue and cry and neighbours arrived there. Being told that her husband was taken away by the army, the neighbours suggested that the army would take him to the Dhoopdhara Police station, and that it was not necessary to go there at that late night. Next morning when they were about to proceed to the Dhoopdhara Police Station in search of him, one Rabin Rabha, being allegedly told by a co-villager, informed that the dead body of Subarna Rabha

was lying near the road to Gathiapara village. Then her brother-in-law (husband's brother) left for that place.

The FIR was lodged at the Dhoopdhara Police Station that morning itself (26.8.98) by their son Prasanta Kumar Rabha. The police arrived thereafter, to Dhanubhanga, Deodavita village, Dist. Goalpara.

P.W.3. Dr, Dibakar Medhi Senior Medical & Health Officer, Nanoi P.H.C. performed the post-mortem examination of the decomposed dead body of Subarna Rabha on 27.9.98 and found as follows:

Penetrating injury on right eye, eye ball completely damaged, There is a collar of grease on both eyelids.. Wound is circular and 9 mm in diameter, The wound passes through the eye socket, and brain matter and membrane of the brain came out through the left temporal bone. It is above the left penna. A bullet is found over the bandaged temporal bone and below the skull. The wound of the temporal bone is about 25mm in diameter. The membrane and brain matter is bloodstained.

Abdomen, one penetrating wound, right torrid line circular in nature 8 mm in diameter inverted, and a collar of grease found around the wound. The wound passed through the inguinal vassels in soft tissues right side of bladder, rectum end comes out through perinium just left to the anus. The wound is extroverted and 15 mm in diameter. Peritonium is blood-stained. Left lower molar and canine teeth are broken and found in the oral cavity, with blood clots. Stomach congested, small intestines congested. Death was due to shock and haemorrhage as a result of the above injuries. The dead body was decomposed after 40 hours of death. All the injuries were ante-mortem, Report was prepared on the same day 27.9.98 and submitted to office of the Civil Surgeon, Goalpara who countersigned it on 16.1.99. There is no doubt that these injuries were caused by very powerful firearms of prohibited bores with so destructive effects.

(B) Identity of the killer(s) and their accomplice(s), if any.

The killing of Subarna Rabha was secret not so much as to time, place and manner of killing, but as to the identity of the killers and their accomplices. The identity of the killers has to be based on evidence beyond reasonable doubt. This raises the question whether the army-dressed people were actual army-men or some others in disguise. Sometimes police and military used to come together to their house and make similar requests and talk of similar consequences which caused fear in their minds. It may be recalled that the assailants were said to have been in army dress. This would normally suggest involvement of the army, but in some Goalpara cases it was said that there even the SULFas were sometimes seen in police and army dresses. So dress alone could not be conclusive. The modus operandi was similar to that of some SULFAs and could be identified accordingly. . . .

As regards identity of accomplices, it is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude, the perpetrator of the crime. However, often they are used as synonymous. We have to see if anyone excited, helped, aided, abetted or facilitated the commission of the killing, of Subarna Rabha.

The O.C. Dhoopdhara P.S. Shri Pradip Kumar Talukdar registered Case No 40/98 and entrusted its investigation to S.I. Shri Lakheswar Madhi who took up investigation, got the inquest and Post-mortem completed.

P.W. 1 Smti Phuleswari Rabha, wife of Shri Subarna Rabha, said that on 25.8. 98 at midnight, about 12.30. A.M. about 5/6 persons came to their house in army dress when all the inmates were sleeping and called Subarna and she herself opening the door saw those persons, pistols in hand, and as her husband was with her, said "*Chalo Chalo*". When she refused to go, they caught hold of her husband and asked him to accompany them. Their children were still sleeping, when they forcibly took her husband into their vehicle and left the place. At this she raised hue and cry and narrated the incident to the neighbours who arrived by then. They said that Subarna would be taken to Dhoopdhara P.S. and hence no need to inform police, Next morning as they were about to proceed to Dhoopdhara P.S. one Rabin Rabha, a co-villager came and informed that the dead body of her husband was lying on the road leading to Gathiapara village. Then her brother-in-law (Husband's brother) and her son left for Dhoopdhara P.S. and there her son Prasanta Kumar Rabha lodged the F.I.R.

Smti Phuleswari Rabha deposed that her husband was killed only because one of her husband's brothers, Shri Nirbhoi Rabha, was an ULFA. She also deposed that the army used to come to their house and enquire the whereabouts of her brother-in-law Nirbhoi Rabha who was the fifth of their six brothers, Subarna having been the eldsst. In cross she said that there was no electricity in their house, that it was not a moon-lit night; that the killers spoke only in Hindi and never in Assamese.; that earlier the army used to come during day time and used to say that they were coming from Draangiri army camp, about 5 miles away towards Boko; that Nirbhoi came home once before two years of the incident and that his alias was Moina Gohain.. There were two other ULFAs in their village, namely, Damodar Rabha and Sukleswar Rabha who surrendered after this incident. Therefore, it was clear that they were ULFAs on the date of the incident, and there was no room for suspecting them, as an ULFA would not normally kill the parent of another ULFA.

It was in evidence that the army earlier used to ask the members of the family to persuade Nirbhoi Rabha to surrender and come to the main stream, and failing that, the consequences would not be good for the family. Ubiquitous armed forces and other forces of the Union. and the local police joined in the efforts to persuade the members of Nirbhoi's family to persuade him to come to peace talks, and also in forewarning that failure to do so would not be good for the family. According to Phuleswari, the night intervening between 25th and 26th August was a dark night and there was no electricity in their house. The Army people when they came earlier used to talk in Hindi. Of course on the incident day also the army-dressed persons talked in Hindi, but it could not be ascertained whether it was broken Hindi, or mainland Hindi, When the S.P. asked her this question she could not reply as she did not know Hindi. As no empty bullet cases were recovered the type of weapon used could not be known for certain, except what was indicated by the serious nature of the injuries caused.. There has been evidence in the I.O. that the extremists were often seen moving in army or police dresses Phuleswari Rabha said that the army and police used to come to their house together.. The vehicles used were not specifically described. It has not been suggested by any witness that the assailants were army personnel. Smti Phuleswari also said that there were two ULFAs, namely, Damodar Rabha and Sukleswar Rabha, in their Village Deodharbhita, but they never came to Subarna's house before his death; and they surrendered after the death of her husband; and that Nirbhoi Rabha did not like to surrender before the incident.

Shri Akan Rabha of A.G.P. was the M.L.A. from Dudhnoi constituency at the relevant time Phuleswari Rabha heard that at that time secret killers were, elsewhere killing members of ULFA families, and they were also apprehensive of such dangers to their family, but they did not inform local police as it would be of no avail.

At the time of Subarna's death their son Prachanta was 20 years of age, and he could not pass the HSLC Examination. While they did not apply to Government for any compensation, in her deposition Smti Phuleswari Rabha prayed for adequate compensation for the family. Prasanto Rabha, being examined, said that when his father was lifted away he was fast asleep; and that he was being paid Rs. 1200 per month which was quite inadequate for the family and so he prayed for suitable employment.

The problem of identification of the killers is complicated by the information that in Goalpara in some cases even SULFAs were seen moving in army and police uniforms. The assailants reportedly came in Maruti vehicles and not in army vehicles. It should not have been difficult to recognise army vehicles. The people who were met by the S.P. Mr. Thangneu told him that the assailants covered their faces with black cloth, obviously to avoid being identified.

The problem of identification also necessarily tinged by the question of the rather premature submission of the F.R. (Final report) which in the case was submitted after only six months. The S.P. Mr. Thangneu explained that once a case is treated as S.R. case, it goes to the CID, and the SSP i.e., Senior Superintendent of Police is in charge of investigation of the case. He submitted that there would be the first progress report, then the second progress report and the third progress report, whereafter he (S.S.P.) suggests the submission of F.R. in the case and the Addl. S.P., who is the Crime Officer, approves the filing of F.R., and the same is submitted to the Chief Judicial Magistrate who passes the F.R. after issuing notice to the complainant. Thus, according to Mr. Thangneu the matter need not come to the Superintendent of Police. However, the I.O. denied that the case was sent to CID and he said that the Progress Report (P.R.) was not written by SSP, CID. The S.P. could not explain the unholy haste in submitting the F.R., and the suggestion that the F.R. was filed in unholy haste at the orchestration of the higher authority with oblique motive was disagreed with. He even did not know that there was any rift or discord between ULFA and the SULFA. He said that the investigation of the case was in the hands of the Addl. S.P. (HQ) and the F.R. could be issued only after getting clearance from the CID; and hence the S.P. did not come in the process. He also pointed out that even if F.R. is submitted, the investigation of a case may be reopened at any stage. The fact of the case having been an ULFA related one, could not be denied in face of the clear statement of Subarna's widow Smti Phuleswari Rabha that there was no other reason for killing of her husband except because of his brother Nirvoi Rabha having been an ULFA. Surprisingly enough, the investigation did not proceed in that line; and who could have been against ULFAs was not considered at all.

The I.O., Shri Lakheswar Medhi deposed that he examined number of persons from the Deodharbhita village including Smti Phuleswari Rabha, wife of Subarna Rabha. She stated that on that fateful midnight 5/6 miscreants in army dress came to her house, knocked at their door, and when awakened by the knocking sound and call in Hindi to come out, she came out followed by her husband Subarna Rabha, and as soon as she opened the door, she saw those armed, army dressed, not tall persons, and they dragged her husband to the two maruti vehicles parked on the road near their gate and took him inside one of the vehicles and sped away. She heard the moving sounds of the vehicles rather muffled. When asked, the I.O. said that he knew that Subarna Rabha's brother Shri Nirbhoi Rabha was an ULFA and that yet the idea did not occur to him, namely, that fact might have had something with the killing of Subarna Rabha. He also admitted that he earlier

visited Subarna's family house and enquired the whereabouts of Nirbhoi Rabha, which clearly meant that the Dhoopdhara P.S. kept track and maintained surveillance over that family. It must, therefore, be more surprising whether his not remembering those facts might have been a pretension for keeping SULFAs out of view, and that the possibility of remote-orchestration could not be ruled out.

The I.O. examined Shri Arabindra Chandra Das, Shri Bisweswar Rabha, Sayed Riware, also a co-villager, Shri Suresh Teewari, all co-villagers, and Shri Anil Rabha brother of Subarna Rabha U/S 161 Cr.P.c, but none could give any clue as to the killers or motive behind the killing. This sounds absurd in face of what Phuleswari Rabha said, namely that there could be no other reason for killing Subarna Rabha except for that his brother Nirbhoi was an ULFA. While examined Smati Phuleswari Rabha mentioned about two small Maruti cars parked on the road near their house wherein some more army-dressed people were speaking in Hindi and that the army persons were not tall figures. I.O. did not ask Phuleswari Rabha as to whether the Hindi spoken by the army people were broken Hindi or mainland Hindi. The I.O. did not ask whether the army-dresses displayed any ranks or positions. The I.O. on the other hand said that sometimes the extremists also used to go out in army dress. He did not ask anything about the vehicles. and also did not alert any neighbouring police stations for detecting and intercepting such Maruti vehicles. Apparently, the I.O. did not try to interpret what was the indication by saying that the army-dressed persons were not tall persons.

According to the I.O. there was no army camp in Dhoopdhara and Rangjuli areas; No search or raid was conducted because there was no clue at all, and so. he did not think that the culprits were army men. He said that the case was not sent to the CID because they (CID) did not want it. According to I.O. there was one SULFA, Shri Shri Praadip Rabha, but he used to stay in Guwahati. He did not know SULFAs Shri Damodar Rabha and Sukleswar Rabha. He knew that Nirbhoi Rabha, brother of Subarna Rava was in ULFA, but he did not know his alias. The I.O. clearly said that there was instruction from higher authorities to keep watch over Subarna Rabha's family. and the same came from the S.P. Yet, he said that no idea as to some enemy of ULFA being behind the incident came to his mind in course of investigation. I.O. denied the suggestion that he did not pursue the line. On the question of his failure to find any clue, he said that there was no supervisory note on investigation issued by any of the higher officers and no indication of any clue came from them. The I.O. also submitted that the P.R. (Progress report) was issued by the Circle Inspector himself suggesting the absence of any clue and that F.R. (Final Report) be issued, and that on that basis the Addl. S.P. (H.Q.) approved the issue of the F.R. barely after 6 (six) months of the incident and, after notice to the informant, accepted by the Chief Judicial Magistrate, Goalpara, approved the F.R. barely six months after the incident. He admitted that it was not his decision to issue the F.R. which meant that the F.R. was issued not on basis of investigation status but on orchestration from above. The witness denied the suggestion that there was unholy haste in premature filing of the F.R.; that the same was submitted at the behest of the higher authorities, and that there was unholy nexus between the police, the concerned SULFAs and the Government in the matter of putting an end to the investigation. In the S.R. case involving murder of an innocent member of the ULFA family, imposing death penalty on a "status offence" The weapons and ammunitions of prohibited bore were not explained by appropriate expert forensic /ballistic examination. The vehicles were never detected. The SULFAs were ignored for the reasons best known to the police authorities All these may justify regarding them as accomplices in the case..

N.W. 2 Shri Pradip Kr. Talukdar who was the O.C. of Dhoopdhara P.S. said that he was in touch with the I/O of the case and gave him some verbal instructions regarding its investigation. He was Dhoopdhara O.C. from 1988 to 2000. They maintained a list of ULFAs, about 10/15. There

were only two SULFAs, one being Pradeep Rabha, both stayed in Guwahati. There was no patrolling, even at night there. There was no Army camp at Dhoopdhara. He did not write to higher authorities when no clue was found. As he was not the I.O. in this case he was not required to discuss the question of submission of F.R. with higher authorities. According to him, the procedure was for the I.O. to discuss with the Circle Inspector and the Addl S.P.(HQ) regarding F.R. To the question whether as O.C. he was to exercise control over all the cases of the P.S., his reply was that when a Circle Officer is also O.C. of a Sadar P.S. he could do so, but not when an S.I. is the O.C. for, according to him all S.I.s are equal. That, of course, could not be understood, because the O.C. will normally be seniormost among the S.I.s.

N.W. 3. Dr. Dibakar Medhi saw only one bullet hole on the belly of the dead body but did not mention the bullet hole at the centre of the forehead as seen by the S.P. He did not ask Phuleswari Rabha as to whether the assailants spoke chaste Hindi or Assamese speaking men's Hindi. Though the assailants were said to be in Army dress, he did not ask Phuleawari as to whether their ranks could be ascertained from dress and badges. He also did not ask whether the Army and CRPF used to visit their houses now and then. He did not try to ascertain the particulars of the vehicle used by assailants, or whether some extremists wore Army dress for disguise. He said that in this case no higher officer issued any supervisory note on its investigation. According to him the Circle Officer considered the case and suggested that F.R. should be submitted and the P.R. (Progress Report) was sent to the Addl S.P.(HQ), and he was not required to submit any written report for submitting F.R. Contrary to what was said by the S.P., the I.O. said that the case was not sent to CID as they did not want it. He knew and met only one SULFA Shri Pradeep Rabha of Rabhapara village and he stayed in Guwahati, but he did not know his ostensible means of livelihood. He knew Nirbhoi Rabha, but did not know his alias. He said that despite being told of ULFA Nirbhoi Rabha and despite the police having maintained his track, no idea came to his mind that the killing could have been done by some anti-ULFA agency or group. He denied the suggestion that despite the above facts he did not deliberately pursue that line of investigation wherefore he failed to nab the culprits; and the further suggestion that they knew that the killing was according to plan of some higher authorities and there was no question of finding out the culprits. He said that notice of the F.R. was issued to and was received by the informant.

N.W. 1. Shri T. Thangneu was the S.P. Goalpara district was at Goalpara when he received the information of the killing, at about 7/8 A.M.; and he immediately rushed to the place where the dead body was lying, i.e., on the road to Gathiapara village at a roadside jungle. Before him, the I.O., and the O.C. Dhoopdhara P.S. already arrived there. He asked his subordinate officers to cordon off the place and to search for ammunitions, if any, at the place. He saw one bullet injury right at the centre of the forehead. No empty cases of bullets could be found in the somewhat jungle area. The deadbody was identified by Subarna's son Prasaanto. Therefrom he proceeded to the house of Subarna Rabha, about ¾ kms away. There he found two wailing ladies and did not ask their names, however, being asked one of them said that ¾ assailants came, covering their faces with black cloths and woke up the inmates. Asked as to the language they spoke, he was told, it was in Hindi, but they could not say whether it was Assamese people speaking Hindi or mainland Hindi, as she herself did not know Hindi. He instructed his subordinates to treat it as S.R. case and investigate it carefully, and returned to the place of dead body, and again failed to recover any empty cases. He then apprised the D.C. and arranged for Post-mortem and left the place. Cross-examined by Shri Dhanesh Das the learned Govt. Advocate and Additional Public Prosecutor, Assam, the S.P. said that there was no army camp in Goalpara district, not even at Daranggiri. The Unified Command Structure was applicable to Goalpara district. He remembered to have attended a meeting or two of the District Level Co-Ordination Committee wherein the D.C. presided, but there was no operation by the Army, perhaps because the Goalpara district was earlier peaceful.

and it started hotting up from 1998. There were no SULFAs then in Goalpara and he did not know about ULFA-SULFA rift or discord. The Case Diary did not show any supervisory note on investigation issued by S.P. It appears that to none of the police officers the possibility of someone coming from outside the jurisdiction of Dhoopdhara police station occurred, and no such hypothesis was at all tested.

As regards the F.R. (Final Report), the incident was on 25.8.98, while the F.R. was submitted on 5.2.99, that is, less than 6 months, he said that the investigation of the case was with the Addl S.P. (HQ) and the F.R. could be issued only after getting clearance from the C.I.D. Therefore, the S.P. does not come in the process, he said. To a question whether he did not think that there was some unholy haste in submission of F.R. in the case, Mr Thangneu answered: "The Dhoopdhara P.S. case 40/98 was disposed on 5.2.99 with the approval of CID (HQ). Whether there was any unholy haste or not would be a matter of CID to state. However, even if F.R. is submitted, the investigation of the case may be re-opened at any stage." He had no information of reopening, as he was transferred out on 7.3.99.

Cross-examined by Dr. Y.K. Phukan, the learned senior counsel for the Commission, Mr Thangneu said that he thought that Subarna Rabha was killed at the same place where the dead body was found.

Q. Did you enquire whether Subarna Rabha had some enmity with somebody?

A. I did not enquire about his life history.

Q. What according to you might be the motive of this killing?

A. My first impression was that there were rivalries among many insurgent groups and this killing might be the outcome of such rivalries.

Q. (By Commission) Is it not a fact that this was an ULFA related case?

A. I did not have that idea.

Q. In view of the disclosure by the wife of the deceased, namely, Smti Phuleswari Rabha that her husband Subarna Rabha was killed for no other reason than because one of his brothers Shri Nirbhoi Rabha was an ULFA member, and therefore, there was room for doubting that the investigation did not at all proceed at the right direction, and do you think that the investigation was based on that hypothesis?

A. According to my belief, my impression was that a tribal woman seldom tells lie, but unless or until there is a conclusive evidence, it is very difficult to say whether merely because having a member of the ULFA in the family, Subarna Rabha was killed. (Naturally, Mr. Thangneu did not know that in this series of secret killing cases almost all are killings of ULFAs, members of ULFA families or their relatives.)

Q. I put it to you that the entire investigation of the case was a mere eye-wash so as to subterfuge the design of elimination of ULFA family members at the orchestration by some central higher authority?

A. It seems to be so.

The responsibility is accordingly pinpointed on Police-SULFA nexus using the latter as the striking arm or executioners. The accomplices will be all those who excited, institutionally aided, abetted, helped, facilitated and orchestrated, concealing the perpetration of the killing. The evidence puts this beyond reasonable doubt. Shri Pradeep Rabha and the other SULFAs of Duchi were not beyond suspicion.

This case was the first of its kind in Goalpara district and the contours of criminality are not prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Dhoopdhara area itself. An almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA

camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost.. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi SuLFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

(C) Whether there was conspiracy in targeting the victim and the motive behind killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, and 2. Motive behind killing.

1. Conspiracy in Targeting the Victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:.

“When two or more persons agree to do or cause to be done-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

“ A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing . to be done, is said to instigate the doing of that thing; or (Illustration omitted),.....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the First report and the same is referred to...The question whether there was any conspiracy or not in the killing of Subarna Rabha has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Subarna Rabha were requested by various Govt. agencies to persuade their younger brother shri Nirbhoi Rabha, who has been an ULFA, and were forewarned by the army, the CRPF and police that if Nirbhoi Rabha could not be persuaded, by them to join the peace talks and bring peace, the consequences would not be good for the family. The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing of Subarna Rabha.

There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFA in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and

the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched 'in srcrecy, these circumstantial evidence will be relevant and admissible. In the killing of Subarna Rabha there were 5/6 persons in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative institutional assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy of the worst kind, being among the protectors against the victims they were bound to protect. under the law, in this case.

II. Motive. behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 that Subarna Rabha's widow Smti Phuleswari Rabha deposed that there could be no other reason for killing of her husband Subarna Rabha, except for that his brother Shri Nirbhoi Rabha was in the ULFA. This statement was not challenged in cross-examination. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender, the Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Subarna's family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in the deposition of the then Chief Minister Mahanta. A course of conduct by different agencies towards similar persuatuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Subarna Rabha, and thereafter finally culminating in hiskilling support such a conclusion beyond reasonable doubt. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terfror let loose and when even then they failed, they should be secretly killed ? The way in which, and with which Subarna Rabha has been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in this case, as in all other Goalpara cases, the investigations were made to fizzle out and the F.R. (Final Report was submitted shows that the police has been in collaboration with the killers. All these also prove that the entire scheme is being remote-orchestrated from the top of the department. Those in helm of the Departments must be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The member of the ULFA family has been executed brutally, for no fault of his, and only for his belonging to the ULFA family of Nirbhoi Rabha, that was, for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuatgion of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the

question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. We have to ascertain from the circumstances, anterior, present and posterior to the incident of killing. The anterior circumstances were that Nirbhoi Rabha was one of the banned outfit ULFA. There had been constant efforts in Assam to solve the insurgency problem created by ULFA and similar outfits in the region. Use of force attained limited success. Some of the extremists have left the country and have taken shelter in foreign countries. Their whereabouts being not known to the anti-insurgency authorities. One possible way was to request the members of the foreign sheltered leaders of the banned outfits and request them to exercise their relationship influence to give up the path of insurgency and come to the normal stream in the country. None could find any fault in such efforts. That such a move was there in case of Subarna Rabha is evident in this case. However, if undue influence, coercion, or violence is resorted to, that may be illegal, punishable and violative of fundamental and human rights. More so when secret killings are resorted to as in this case.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such measures as could help us in pinpointing responsibility on the persons involved. Fortunately, the term of reference mentions "involved directly or indirectly in commission of killing." This enables us to act on basis of integrated evidence rather than on isolated ones. We have, therefore, to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule "Phipson on Evidence," 9th ed. P. 51, under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, 'In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court'.

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of cases and with those in earlier group of cases, is, therefore, relevant and admissible,

Best also on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators"

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka, in an earlier group case, has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of the first group of seven cases are found also in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

1. That this killing involved an ULFA family, being that of Shri Nirbhoi Rabha and its investigation ended in returning of the case in F.R. (Final report) without finding any clue. .

2. Unlike in other cases, this killing, of Subarna Rabha, was committed in the dead of night , to be difficult to see the killers and to allow the assailants to escape under cover of darkness.

3.. The assailants covered their faces with black wrappers, to avoid being identified.

4. The weapon used in killing was a firearms of prohibited bore being .32/.38 or bigger bores generally found in police-military situations

5. The firearms being of prohibited bores, forensic examination of the material exhibits (empty bullet cases. used bullets etc) was avoided.. The report was collected long after. investigation fizzled out..

6. The vehicles used was reportedly small Maruti cars without number plates which were never seized or taken into custody. This raises suspicion of those having been none else than Govt. vehicles..

7. There were police patrolling in some crime areas prior and posterior to, but not during the killing.

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot him/them dead or take him/them away and kill him/them secretly and throw the bodies somewhere..

9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..

10. There was connivance of SULFAs; and omission to make any SULFA an accused despite clues..

11. The investigation did not commensurate with the seriousness of the crime perpetrated.

12. That modern scientific methods of investigation, finger/foot prints, dog-squads etc.were never used.

13. No condolence message was sent from the then Govt. of Assam to the victim family.

14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam.in this case.

15 In this case death penalty has been imposed for "status offences," on Subarna Rabha for being a member of ULFA family of Nirbhoi Rabha...

16. From this case "remote- orchestration" from the State is visible beyond reasonable doubt..

The remote was supposed to be at Home Department..

This conclusion is based on the evidence and similarities of the common characteristics of the seven cases with those in earlier group of cases in almost all respects,

which could not be so, unless there was remote- orchestration from highest authorities. The

remote was supposed to have been at Home.Department.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of the report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. This could have also been the position under Article 355 of the Constitution of India, as for internal disturbance there has been no question of external aggression. However, the internal disturbance has to a great extent been under control. The life in the State has become

normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, except punishment under the law, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination

etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters" trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. Of course, this principle is not applicable in criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "responsible superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. As already said, this Insolvency principle is not applicable in criminal law.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment

of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim Smti Phuleswari Rabha, for the benefit of the family, a sum of Rs.5,00,000 (Rupees five lakhs) forthwith. More than seven years have already elapsed, and it brooks no farther delay.

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(9)

SHRI TAPAN DAS KILLING CASE.

Goalpara P.S. Case No.287/99

(Date of occurrence.. 28.12.98)

By this Commission's order dated 23.8.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.1995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commission is to inquire into, in each case the following terms of reference, and any other matters with recommendations, if any, namely:

- “(a) Circumstances, in each case, leading to the killing of the victim(s)
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (e) To make recommendations to prevent recurrence of such killing(s)
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

(A) Circumstances leading to the killing of Shri Tapan Das.

On 29.12.98 Shri Sudhir Chandra Das s/o Late Rama Kanta Das of Chandaria village lodged at the Goalpara Police Station a written Ejahar to the effect that on the previous day (28.12.98) at about 10.45 p.m. an Ambassador car and one Maruti van arrived; and stopping near his gate, and coming to his house, called his son Shri Tapan Das by name, and knocked at his door. With his son, Tapan, he also came out. As soon as his son Tapan reached the road near the gate and refused to proceed and tried to return, holding him and bringing out deadly fire arms from the two vehicles, the miscreants

fired several shots on his son and sped away in the vehicles. As a result of the above incident, his son Tapan Das died on the spot.

The post-mortem report revealed the following antemortem injuries on his dead body, as explained by P.W. 2 Dr. A.H. Ahmed who conducted the post-mortem examination, namely, Multiple bullet injuries with entry and exit wounds on chest and arms; Cranium and left side lacerated injury, the scalp and the back occipute region and thorax; two entry wounds on the back right side; two exit wounds on front and lacerated front muscles, fracture on ribs and pneumo-thorax, plura collapsed. Right lung lacerated with haemorrhage inside left lung lacerated injury on upper. There is comminuted fracture, both plura and 3rd & 4th ribs on the left side and 5th & 6th ribs on the right side. More detailed descriptions are: Comminuted fracture on the humerus; A small entry wound $\frac{1}{2}$ "x $\frac{1}{2}$ " mediating from 4"x4" vertebrae; The exit wound in front with lacerated injury on right lung and fracture of the 5th rib. A small entry wound $\frac{1}{2}$ "x $\frac{1}{2}$ ". scratch on the left shoulder/ lacerated exit wound 3"x3" arm and face muscles; a small entry wound $\frac{1}{2}$ "x $\frac{1}{2}$ " back of the chest on the left side medial margin of the scapula tissue lacerated. The P.M. report was prepared on 29.12.98, but was countersigned by C.S. on 6.2.99. The explanation was that such reports are sent by local office in lots to the C.S. office for signature and that took time for which the witness could not be responsible. All injuries were antemortem in nature, and death was by shock and haemorrhage due to the injuries described.

From the above injuries there could be no doubt that Shri Tapan Das died as a result of the injuries sustained by him when fired upon him by the assailants.

(B) Identity of the killer(s) and their accomplice(s), if any.

Accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, it divides the accomplices (parties to a crime) into perpetrators and accessories. An accessory is one who excites or prompts the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. The identity of the killers and their accomplices, if any, has to be based on evidence and judgment. P.W. 1. Smti Minati Das daughter of late Sudhir Das, in her affidavit dated 10.10.06 stated that she was the younger sister of late Tapan Das and that on 28.12.98 at about 10.45 P.M. one Ambassador and one Maruti Van came, parked in front of their house and knocking at their door called Tapan Das. Hearing that, her father Shri Sudhir Das (since deceased), her elder brother Shri Tapan Das and herself came out of their house and saw Shri Jagannath Sangma @ Chira of Bapuji Nagar, Shri Rusevelt Rabha, Shri Bipul Rabha of Baida, Shri Jayanta Rabha @ Tepa of Dhanubhanga, Shri Munna Sarma S/O Shri Uttam Sarma of Goaltuli, Shri Dhanapati Medhi of Bapuji Nagar, Shri Ratna Das of Bapuji Nagar and Shri Rinku Choudhury, all SULFAs then staying in the SULFA camp at Bapuji Nagar, Goalpara. They called Tapan Das to the road and bringing out firearms from the vehicles fired several rounds on Tapan Das and left in their vehicles. As a result her brother Tapan Das died on the spot. The deponent further said that the Circle Inspector-cum- O.C Shri Upen Bora and Shri Nitya Ranjan Mahanta, Town S.I were there with the Killers.

In her deposition Minati Das added two more names, 1. Shri Lakhan Nath and 2. Shri Dhruba Nath, who, according to her, were associates of those already mentioned in her affidavit. The same group was also said to have been involved in kidnapping of one Mukul Sarma of Agia Balijan who was fortunately recovered by prompt police action and was reported in Pratidin of 13th August 1999 (page 2. Column 2&3). In cross she said that there was electricity in their house and the street light post was in front of their house so that everything could be seen outside; and they saw all the eight aforementioned persons, whom she knew more or less. Jagannath Sangma and Dhanapati Medhi came from the car and called and escorted Tapan Das to the parked cars and

as he reached near the cars, they brought out their deadly firearms from the cars seeing which Tapan Das tried to escape but was shot several rounds from backside; and the killers sped away. They came in two vehicles, an Ambassador and a Maruti van both were white. Minati Das said that immediately they came to the road to see what had happened and which way the vehicles left, they found Shri Nitya Ranjan Mahanta O.C. and Shri Upen Chandra Bora C.I were searching something from the dead body of Tapan Das. Immediately the neighbours also arrived and asked the two what they were doing instead of pursuing the culprits? They replied that their own lives were also insecure and how could they pursue the culprits? Then they walked away to their right by the road beyond the bend and the neighbours heard the starting sound of a vehicle and moving towards the police station. This clearly proved that the two were with the killers parking their car hidden beyond the bend; and as soon as the killing was over, they tried to find and remove the bullets and other things to efface evidence. This meant that they were with the assailants parking their vehicle beyond the road bend to keep it out of sight.. Police thereafter came to the place of occurrence at about 12 midnight, including the C.I and the O.C. Their neighbours informed the police. Her father Sudhir Das lodged an FIR of the incident at about 2 A.M. at the Goalpara Sadar Police Station whereupon its Case No.387/98 was registered. The post-mortem examination on the dead body of my brother Tapan Das was performed on 29.12.98 at the Goalpara Civil Hospital.

Smti Minati Das in para 8 of her affidavit stated that Sri Dhanapati Medhi and Shri Jagannath Sangma came to their house twice, at 10 A.M. and 12 noon, respectively, to meet her brother; and that often the assailants used to frequent their house to meet her brother. Further she stated that on that very day, before the incident, at noon, Shri Upen Borah, Circle Inspector and Shri Nitya Ranjan Mahanta, O.C. also came to their house in search of her brother Tapan Das.

Since about 3 / 4 years Shri Tapan Das was a construction contractor and was friendly with some of the SULFAs who used to frequent their house. She said that earlier also on two or three occasions, when Tapan was moving on his motor cycle, some of these boys asked Tapan to go to their place, but Tapan avoided them. He told this to his cousin, Kausal, next door. This could mean that he might have had the threat perception from these instances. According to Minati Tapan had good volume of contract works. To a question whether Tapan was arrested and detained by police, Minati replied in the affirmative saying that whenever some happening was reported in Goalpara, Police used to arrest, detain, and torture Tapan. This undoubtedly was indicative of the police suspecting and treating Tapan as an ULFA, as was seen in number of other cases. For instance, when there was a bomb blast at Agia, Tapan was picked up, detained and released. Later it was reported to have been caused by ULFA. Tapan was in AGP and worked for it during election. However, the question as to which of the factions, namely, AGP and New AGP he belonged, was not put to her. She also said that on one occasion the Army also did the same. From all these there can be no doubt that he was taken by police and the Army to have been an ULFA. Minati Das believed that the killing of Tapan Das was the result of collaboration between the then Government, the Army, the police and the SULFA; and that it could not have been otherwise. She knew the SULFAs as they, with her brother Tapan, were in the AGP, then they became ULFA and on surrender became SULFAs except Tapan who remained in AGP, and that she knew them when that came to their house and she offered tea ..

Smti Minati Das in her affidavit said that the Goalpara Police, allegedly not finding any clue returned the case in F.R Memo No. GLP/ PSI/D/2000/9.30 dated 12.7.2000..

From the above evidence it is clear that the Police and the SULFAs concerned were hand in hand for all purposes. The assurance behind it must have come from the highest authority in Home Department emanating from the fact that destruction of ULFAs was the pronounced objective as was clear from the ULFA surrender efforts and steps towards it. Prospects in service in the Department must have been believed in implementation of the ULFA killing plan.. Of all the treacheries, the

one by the protector himself has to be regarded as most dangerous when the protector himself turns a destroyer, he deserves exemplary punishment. When the fence itself devours the crops it was meant to protect, that fence has to be destroyed..

Shri Dhanapati Medhi of Bapuji Nagar, Ratna Das of Bapuji Nagar and Rinku Choudhury, all SULFAs were said to have been staying at the SULFA camp at Bapuji Nagar, Goalpara. It was deposed by a witness that there was one small SULFA camp at Dudhnoi and another at Krishnai. It was deposed by a witness in Bimalendu Bhakat Killing case that the white Maruti van which had been used in some of the Goalpara district killing cases was seen to have been used by the SULFAs of Dudhnoi SULFA camp; and the white Ambassador care that was seen to have been used in a number of killing cases of Goalpara district belonged to SULFA Rinku Choudhury who stayed at Dudhnoi with his parents at Dudhnoi. It was further learnt that the Dudhnoi SULFA camp was located at SULFA leader Rusvelt Rabha's house.. If these two statements are true, and there has been nothing to prove those to be untrue. One has to believe that the suspects named by Smti Minati Das have also to be believed to have been involved in the killing. The identity of the killers and the accomplices will accordingly be established..

The named SULFAs were issued notices under Section 8B of the Commissions of Inquiries Act, 1952 and in response they filed affidavits and appeared for cross examination. They were also given opportunities for cross examining Smti Minati Das who mentioned their name.

N.W 1 Shri Lakhan Ch. Nath in his affidavit and deposition said, *inter alia*, that he joined the ULFA in 1994-95 and was still in ULFA on the date of occurrence of this case i.e., 28.12.98 and surrendered on 17.9.99 and thus could have had no clash or enmity with Shri Tapan Das, and being not SULFA could not have joined with any one to kill another ULFA Shri Tapan Das.. This plea was found reasonable, as one ULFA was not at all likely to have killed another ULFA being under strict discipline of that organisation.

N.W. 3 Shri Rinku Chowdhury of New Dudhnoi Dudhnoi, said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed. He was allowed to cross-examine Smti Minati Das.. He said he did not know anything about the incident mentioned in the affidavit and deposition of Smti Minati Das, P.W. 1, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped. He however prayed, in the alternative, that he be allowed to cross-examine Smti Minati Das and he was allowed to do so. He deposed, *inter alia*, that he did not know Tapan Das and Minati Das; He deposed on 21.11.2006 that he joined the ULFA in 1988/89 and surrendered 29.1.93 and thereafter engaged in business and had lost interest in ULFA matters. He surrendered because the police used to trouble him and called to the Police Station now and then. He knew neither Shri Tapan Das nor Smti Minati Das and did not know how and why his name happened to be mentioned by Minati Das inspite of his being innocent. That it was not correct that he was deposing falsely or that there was unholy nexus between the police and the SULFAs or that the killings were engineered and pre-arranged from above.

N.W. 5 Shri Munna Sarma @ Gautam Sarma deposed that he had received a notice from this Commission and consulted his learned counsel and Dudhnoi, said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed. He said he did not know anything about the incident mentioned in the affidavit and deposition of Smti Minati Das, P.W. 1, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped. He however prayed, in the alternative, that he be allowed to cross-examine Smti Minati Das and he was allowed to do so. He deposed, *inter alia*,

that he did not know Tapan Das and Minati Das; that going through the affidavit and deposition of Smti Minati Sarma stated that the allegation about his involvement in the killing was not true and he denied it. He joined the ULFA in 1988/89 after passing his High School Leaving Certificate Examination and while in ULFA he passed his Higher Secondary examination from the Lalit Ch, Bharali College, Guwahati in 1992. He was a General member in the publicity wing and was fixing banners and posters near educational institutions, His alias was Raja Ahmed. He surrendered in 1992. Thereafter he engaged himself in business of supplying gravels to an Engineer who did not provide any vehicle to him He did not know anybody of Tapan Das' family nor did he know where their house was, He was participating in sports and socio-cultural activities of his place and may have earned some popularity and known to the people, but he denied the statement of Smti Minati Das that he was one of the persons who called Tapan Das from his house to the place where the vehicles were parked and where Tapan Das was shot dead by inmates of the parked vehicles. He said he did not even know about the incident, and denied the suggestion that he was deposing falsely.

N.W. 6 Shri Rusvelt Rabha, aged about 42 years, resident of Dudhnoi Damara Road, Dudhnoi, said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed; but he was allowed to cross-examine Smti Minati Das. He said he did not know anything about the incident mentioned in the affidavit and deposition of Smti Minati Das, P.W. 1, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped, He however prayed, in the alternative, that he be allowed to cross-examine Smti Minati Das and he was allowed to do so. He deposed, *inter alia*, that he did not even read the news in papers, but heard it when it spread from mouth to mouth; that he was falsely implicated; that he was provided with a PSO (Personal security officer) with a carbine; that he owned a revolver of .32 bore for which he used to store ammunitions; In ULFA he was Vice-President of Goalpara District organisation; that he has been running a weigh-bridge as his business, that he did not know as to why out of the whole population of the area only his and of the others whom he knew happened to have been mentioned by Smti Minati Das; that he did not know Tapan Das and Minati Das; that it was not correct that he was deposing falsely or that there was unholy nexus between the police and the SULFAs or that the killings were engineered and orchestrated by State authorities.

N.W. 7 Shri Bipul Rabha said that receiving notice from this Commission under Section 8B of the Commissions of Inquiries Act, 1952, he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed; but he was allowed to cross-examine Smti Minati Das. He said, he did not know anything about the incident mentioned in the affidavit and deposition of Smti Minati Das, P.W. 1, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped, He however prayed, in the alternative, that he be allowed to cross-examine Smti Minati Das. He was allowed to do so. He deposed, *inter alia*, that he did not know Tapan Das and Minati Das; He joined the ULFA in 1986/87 when he was reading in Class X, and he surrendered in 1993; thereafter he has been doing paddy business and a bit of money lending; that his function was to tend a piggery of ULFA and did no other work; He said that he was falsely implicated in this case. He was married and had a son and a daughter. He appeared to be simple and rural.

N.W. 8 Shri Jagannath Sangma, aged about 43 years, resident of Bapujinagar, Goalpara, said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed; but he was allowed to cross-examine Smti Minati

Das..He said he did not know anything about the incident mentioned in the affidavit and deposition of Smti Minati Das, P.W. 1, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped, He however prayed, in the alternative, that he be allowed to cross-examine Smti Minati Das. He was allowed to do so. He deposed, *inter alia*, that the allegations made against him were false; he did not know as to why out of the whole population of the area only his and of the others, some of whom he knew, happened to have been mentioned by Smti Minati Das; that he was married and had two children; that his nick name was "Chira" both in ULFA and among others; that he joined ULFA in 1989 and was in its Organisation wing and after he was arrested and jailed for a year, he surrendered in 1993 and thereafter running a tea stall; He stayed in his house and not in the SULFA camp, which he said, was in Jyotinagar a little away from Bapujinagar. He did not know Tapan Das and Minati Das; that he did not know as to why out of the whole population of the area only his and of the others, whom he knew happened to have been mentioned by Smti Minati Das; that he did not know what Tapan Das was doing before the incident. He denied that even before the incident he and his colleagues intercepted Tapan Das on his way and asked him to accompany them to their place; that he did not know CI cum O.C. Shri Upen Bora and TSI Shri Nitya Ranjan Mahanta either before, during, or after the incident; and that it was not correct that he was deposing falsely or that there was unholy nexus between the police and the SULFAs or that the killings were engineered by the State authorities.. Dhanpati Medhi was not examined.

While cross examining Smti Minati Das it was pointed out by Shri Jayanta Deka, Advocate, on behalf of five Noticee witnesses Shri Rusevelt Rabha, Shri Gautam Sarma @ Munna, Shri Jagannath Sangma @ Sira, Shri Bipul Rabha and Shri Rinku Choudhury asked whether her statement recorded under section 161 Cr. P.C namely, that Tapan Das belonged to ULFA and had some financial liability to it, and that when he was intending to leave ULFA, he was lifted by ULFA was correct.. Promptly came the reply from Minati Das that when she was examined by police, nothing was recorded, the whole concocted story must have been written by police and she was not aware of it, and she totally denied it. The witness has to be believed for the following reasons. First, the statement was not shown to her and she did not sign it, and under law it was not to be signed and it cannot be evidence against her. Secondly, no ULFA's statement has been recorded and proved to that effect. Thirdly, the modus operandi of Tapan Das' killing was the same as in killings by SULFA s, not by ULFAs who, as are seen in news paprts, openly come in motor cycle and shoot people at close range; and lastly, it was not likely that an ULFA would be killed by another ULFA., both belonging to the same organisation and discipline. The story must therefore, be rejected as a figment of imagination of the I.O. in an attempt to save the concerned SULFAs, with whom the I.O. was in unholy nexus., by foisting it on the ULFA.

Mr Jayanta Deka submitted that Shri Lakhan Nath surrendered after Tapan Das' killing incident, and hence, he was falsely implicated by her in the case. Smti Minati Das replied that she knew Lakhan Nath very well, and saw him with the other named persons and that be, (Lakhan Nath), remaining a dormant ULFA, was already working with the named SULFAS and subsequently showing false certificate which could not disprove his joining in killing of Tapan Das. From the demeanour of the witness it appeared she was bold and confident in her reply. Mr. Jayanta Deka did not appear on that day for Lakhan Nath, but earlier he conducted Kajgab Nath's examination-in- Chief.

Mr Jayanta Deka tried to corner Smti Minati Das by asking her whether she sent any reply to the police notice of the F.R. (Final Report) in the case or applied for reopening the case. Smt Minati Das having replied in the negative, the learned counsel asked her why she did not reply or applied for reopening of the case, she replied that it was known that police itself was involved in the killing and it would be futile to do so, instead she applied to this Commission as that Govt has changed and the new

Govt appointed this Commission to inquire into secret killing cases and she had faith on the Commission. Mar. Deka's submissions have been duly considered.

The responsibility is accordingly pinpointed on Police-SULFA nexus using the latter as the striking arm or executioners. The accomplices will be all those who excited, institutionally aided, abetted, helped, facilitated and orchestrated, concealing the perpetration of the killing. The evidence puts this beyond reasonable doubt. Shri Pradeep Rabha and the other SULFAs of Dudhnoi were not beyond suspicion.

This case was the second of its kind in Goalpara district and the contours of criminality are not prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Goalpara area itself. Moreover, in view of the higher and higher authorities of the Home department having been interested in the cases, the mobility of the SULFAs have been observed showing a tendency to be at Guwahati. This mobility may not completely severed them from their original places of activity in this regard. A purely regional investigation may not therefore be adequate and effective. An almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost.. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi SULFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices. The contours of criminality are now prominent.. From its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Goalpara area itself. An almost permanent SULFA camp at Goalpara Town accommodated a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Shri Rusvelt Rabha, and at Krisnai outpost.. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi SULFA camp are also suspected to be the perpetrators in this case.

On consideration of the above factors, the evidence and the surrounding circumstances, it is considered to be safe and beyond reasonable doubt to confine the identity of killers to the persons named in evidence, namely, Shri Rusvelt Rabha, Shri Jagannath Sangma, @ Sira, Shri Rinku Chowdhury, Shri Dhanpati Medhi, Shri Gautam Sarma @ Munna Sarma, Shri Jayanta Rabha @ Tepa and Shri Lakhan Nath only. The accomplices may include the other named persons who accompanied in the vehicles, as also all the Government agencies, that individually or institutionally aided, abetted, excited, instigated and facilitated the commission of the crime and omission to do what was to be done in the case...

(C) Whether there was conspiracy in targeting the victim and the motive behind killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, 2..Motive behind killing..

1. Conspiracy in Targeting the Victim.-Conspiracy in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC which is as follows:-

"When two or more persons agree to do or cause to be done

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.-It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or persons or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of the earlier report; the same is referred to...The question whether there was any conspiracy or not in the killing of Tapan Das has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the named persons on several earlier occasions tried to intercept and take Shri Tapan Das with them, and that on the day of occurrence also Shri Jagannath Sangma and Dhanpati Medhi came to Tapan Das's in search of him at 10 A.M. and 12 noon, and also that C.i Shri Upen Bora and Shri Nitya Ranjan Mahabta also enquired during the day. All these showed that there was a course of action to be taken by different authorities and persons

The persons who participated in the act of actual killing on the fateful night, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing of Tapan Das. Therefore, there could be no doubt that forecomers having been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender. This implied the consequences to those who were still something to do with the ULFA. The deliberate ulfocide policy engulfed him.

There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFAs in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the learned Senior Government Advocate, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Tapan Das not only there were 5/6 persons in the act of killing, but also there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy in this killing case.

II. Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 that Subarna Rabha's widow Smti Phuleswari Rabha deposed that there could be no other reason for killing of her husband Subarna Rabha, except for that his brother Shri Nirbhoi Rabha was in the ULFA. This statement was not challenged in cross-examination. Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender, the Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family and persuaded the members of Subarna's family in that line. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in the deposition of the then Chief Minister Mahanta. A course of conduct by different agencies towards similar persuasuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family of Subarna Rabha, and thereafter finally culminating in his killing support such a conclusion beyond reasonable doubt. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring their wards back to peace talks, and why relatives who failed to do so should be mentally tortured and reign of terfror let loose and when even then they failed, they should be secretly killed? The way in which, and with which Subarna Rabha has been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in this case, as in all other Goalpara cases, the investigations were made to fizzle out and the F.R. (Final Report was submitted shows that the police has been in collaboration with the killers. All these also prove that the entire scheme is being remote-orchestrated from the top of the department. Those in helm of the Deparments must be held accountable and need be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt.

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. The ULFA member of the family has been executed brutally, only for his belonging to the ULFA. for a status offence without any sanction of law and in blatant violation of the victim's Legal, Constitutional and Human rights. Intention and motive are often used synonymously. The motive was the perpetuatgion of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused. Motive are often used synonymously. The motive was the perpetuatgion of the AGP rule in the State of Assam by villainy, treachery and monstrous cruelty and dangerous propensity. In Criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it. We have to ascertain from the circumstances, anterior, present and posterior to the incident of killing, The anterior circumstances were that Tapan Das was a member of the banned outfit ULFA. There had been constant efforts in Assam to solve the Insurgency problem created by ULFA and similar outfits in the region. Use of force attained limited success Some of the extremists have left the country and have taken shelter in foreign countries. Their whereabouts being not known to

the anti-insurgency authorities, One possible way was to request the members of the foreign sheltered leaders of the banned outfits and request them to exercise their relationship influence to give up the path of insurgency and come to the normal stream in the country. None could find any fault in such efforts. That such a move was there in case of Tapan Das is evident in this case. However, if undue influence, coercion, or violence is resorted to, that may be illegal, punishable and violative of fundamental and human rights. More so when secret killings are resorted to as in this case.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents and measures as could help us in pinpointing responsibility on the persons involved.

Fortunately also the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule- "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is, therefore, relevant and admissible, Commonness with those of the earlier group is obvious.

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which

it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of the first group of seven cases are found also in this case while answering its terms thereof reference, so as to justify the finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

1. That this killing involved an ULFA family, being that of the ULFA Tapan Das, and its investigation fizzling out...

2. As in other cases, this killing, of Tapan Das, was committed in the night.

3.. The assailants covered their faces with black wrappers and caps, to avoid being identified.

4. The weapon used in killing were a firearms of prohibited bores being .32/.38 bores generally found in police-military situations

5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided..or unduly delayed. The report was collected long after. Investigation fizzled out..

6. The vehicles used were reportedly without number plate which was never seized or taken into custody.

7. There were police patrolling in the crime areas prior and posterior to, but not during the killing.

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot him/them dead or take him/them away and kill them secretly and throw the body/bodies somewhere.. In this case killing was at 10.30.P.M. at night..

9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..

10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues in the mind of the officers. who were seen side by side with the culprits..

11. The investigation did not commensurate with the seriousness of the crime perpetrated..

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. No condolence message was sent from the Govt. of Assam to the victim family.

14. No ex-gratia/compensatory payment was made or offered by the then Govt. of Assam in this case.

15 In this case death penalty has been imposed for "status offences," on Tapan Das. for being a member of ULFA..

✓ 16. From this case "remote orchestration" by Home is discernible.

The remote was supposed to be at Home., so as to justify the conclusion of remote-orchestration by the State authorities for "Ulfocide, that is, deliberate Killing of ULFAs and their families and relatives by treachery and cruelty.

This conclusion is based on the evidence and similarities of the seven cases in almost all respects, with those of the earlier group of case which could not be so, unless there was remote orchestration from higher authorities.

Considering the evidence on record and the surrounding circumstances it is considered to be safe and beyond reasonable doubt to pinpoint the responsibility of involved persons to Shri Rusvelt Rabha, Shri Jagannath Sangma, Shri Rinku Chowdhury Shri Dhanpati Medhi, Shri Munna Sarma and Shri Jayanta Rabha @ Tepa. only.. The accomplices may include the other named persons who accompanied in the vehicles, as also all the Government agencies, that individually and institutionally aided, abetted, excited, instigated and facilitated the commission of the crime..

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of the report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. This could have also been the position under Article 355 of the Constitution of India, as for internal disturbance There has been no question of external aggression. However, the internal disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say, six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately

withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, except punishment under the law, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical or any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will

be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters" trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. Of course, this principle is not applicable in criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. As already said, this Insolvency principle is not applicable in criminal law.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case.

The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor

children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the survivors of the victim, for the benefit of the family, a sum of Rs.5,00,000 (Rupees five lakhs) forthwith. More than seven years have already elapsed, and it brooks no farther delay.



(10)

SHRI MAHESH NATH KILLING CASE

Goalpara P.S. Case No.1/99 .

(Date of occurrence.1.1.99)

By this Commission's order dated 5.4.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt.Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commiaain is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim.
- (b) Identity of the killer(s) and accomplice(s), if any.
- (c) To find if here was conspiracy in targeting Mahesh Hath and the motive behind killing..
- (d) To pinpoint responsibility on persons involved directly or indirectly in the killing.
- (e) To make recommendations to prevent recurrence of such killing.
- (f) Any other matter related to or relevant to the purpose of this inquiry;”

“(A) Circumstances leading to the killing of Shri Mahesh Nath.

Mahesh Nath (45), son of Surendra Nath joined ULFA and was arrested by Army from Rangsal Tiapara L.P. School and was jailed for 5 yearss in connection with his involvement in explotion of Bomb in Kokrajhar district. On his discharge from jail, he became a school teacher in Goalpara district.He was also an adviser of MASS

On 1.1.99 Mahesh Nath (50 years) along with Bhagirath Nath, son of Late Nagendra Ch. Nath of Rampur, Agia, and Nirmal Biawas of Bapujinagar, Goalpara, went to Paikan by cycles and was coming back when he reached Muslimpara, one Gypsy and one Ambassador car, coming from Goalpara side on NH 37 intercepted and called him as *Maheshda* and forcibly dragging him into a vehicle, kidnapped him towards Naothowa village under Krishnai Outpost of Dudhnoi P.S and shot him dead with sophisticated weapons. There has been evidence in Tapan Das killing case that there was one small SULFA camp under Dudhnoi P.S. The taking of Mahesh Nath to Krishnai may have been because there also was a small SULFA camp. According to Bhagirath Nath the armed kidnappers were 5/6 in number. An Ezahar was lodged, to the above effect, on 2.1.99 at the Krishnai Outpost, and the In/ Charge thereof making a General Diary entry forwarded the Ejahar to

the O.C., Goalpara Sadar P.S.. The dead body was kept at the Krishnai Outpost. The O.C. Goalpara P.S. on that basis registered its Case No. 1/99 (u/s.365/302/34 I.P.C. & s.25(1) (a) of Arms Act.) and entrusted the investigation to Shri Kamaleswar Bora, In/Charge, Agia Outpost of Goalpara P.S.

On 2.1.99 P.W. 1 Shri Birendra Kumar Nath, uncle (father's younger brother) of Mahesh Nath. was informed from the Agia Outpost, that a dead body was lying at the Krishnai Outpost. At about 8 A.M. he, along with his son-in-law Joychandra Nath, Tarini Kanta Nath brother-in-law of Mahesh Nath, arrived at Krishnai Outpost and identified the dead body to be of Mahesh Nath. They saw probably three bullet injuries on the body covered by blood clots, and sent it to the Goalpara Civil Hospital for post-mortem examination, on completion whereof it was returned to the family members.

P.W. 4 Dr Shyamalendu Das who performed the post-mortem found two injuries on the dead body of Mahesh Nath.

1. A vertical lacerated injury about 2 inches wide on the left side of the neck, destroying underlying curves completely. The entry and exit points could not be indicated as the entire muscle of the neck was blown off by the bullet.
2. Caused injury above the left knee.

According to the doctor both the injuries were caused by sophisticated rifles, may be by the same rifle. The injuries were antemortem and rigor mortis was present, and death must have been caused before less than 36 hours of post mortem examination.

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Kusum Bala said that Nirmal Biswas told her that the inmates of the Maruti van were in civil dress, the time was 4/5 P.M., but she was not told whether they were armed or not. She did not any way suspect Nirmal Biswas as he helped a lot when Mahesh Nath was undergoing an operation in Goalpara Civil hospital. And Mahesh himself said that he was almost like a "bhagi" to their family. She was second wife of Mahesh Nath, and they had four daughters from the first wife and two sons and a daughter by her. She further said that after the death of her husband the then AGP MLA never visited their house, while Mr. Jyotish Das, MLA from East Goalpara came, consoled her and tried for her appointment and himself handed over the appointment letter to her as a School teacher and she used to get Rs.5,200 as salary per month.

(B) The identity of the killers and their accomplices, if any.

The killing of Mahesh Nath was secret not as to time and manner of killing, but as to the identity of the killers and their accomplices. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into

perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

The identity of the killers and their accomplices has to be based on evidence on record.

P.w. 1 Shri Birendra Kr. Nath deposed that to his knowledge, Mahesh Nath joined the AGP. On 1.1.99 while P.W.1 was sitting in his shop, he saw Mahesh Nath and Nirmal Biswas, who was also in AGP, going towards Krishnai where probably some meeting was held. The witness knew Mahesh Nath to be a highly enthusiastic and active young man. During his student days he was an active student leader, and during the Assam movement Shri P.K. Mahanta, the then President of the AASU, subsequently the Chief Minister of Assam, Aka Rabha and many others visited Mahesh Nath's house. When the AGP split into two, around 1991, namely, the AGP and the New AGP, Mahesh Nath and his friends sided with Bhriku Kumar Phukan, and consequently, Mahesh Nath and his friends became eye sore to the other group, namely, that of Prafulla Kumar Mahanta. It was his firm belief that Mahesh Nath was killed as a result of this political rift by Mahanta's group.

It is to be noted that Shri Prafulla Kumar Mahanta denied the above allegation in his affidavit; and he prayed for permission to cross-examine Shri Biren Nath in that context. The Commission granted his prayer and fixed 25.11.2006 for cross-examination of Shri Biren Nath who was duly notified to be present. However, on that date, 25.10.2006 the Commission sat at Goalpara but neither Shri Prafulla Kumar Mahanta nor his learned counsel appeared before the Commission. The principle of natural justice was fully complied with by the Commission in this regard.

The witness stated so to an earlier investigation team which recorded his statement and suggested to him to state that Mahesh Nath was killed two days earlier than 1.1.99, which he refused to do and repeated that Mahesh Nath's death was a secret killing orchestrated by the then Govt. of Prafulla Kumar Mahanta.

P.W. 1 also said that Mahesh Nath was arrested by police about two years before the incident, but he was not a SULFA. Mahesh Nath's parents were alive, his first daughter was married, second unmarried, his two sons were only 4/3 years at the time of his death. His wife was P.U passed and was appointed school teacher by the Govt. after his death. He knew SULFAs and their activities, e.g., they used to stop running trucks and demand money from them. There were SULFAs in Agia area.

P.W. 2 was Smti Kusum Bala Nath wife of Shri Mahesh Nath. She said that her husband went out with Nirmal Biswas that day, but did not come to their house for about ten days thereafter. When he came, she asked him what happened and was told by Nirmal Biswas that on 1.1.99 he and Mahesh Nath went to the house of Mahesh's elder sister Panchami's house at Paikan and after taking tea there, both of them were returning home on bicycles when they found one Maruti van coming towards Paikan stopped near them and dragged Mahesh Nath into the van and fled away. Asked why Biswas did not report the matter to the family of Mahesh Nath, his reply was that he himself was so much terrified that he hid himself all those days and could not muster courage to come out. Kusum Bala said that Nirmal Biswas told her that the inmates of the Maruti van were in civil dress, the time was 4/5 P.M., but she was not told whether they were armed or not. She did not suspect anyway suspect Nirmal Biswas as he helped a lot when Mahesh Nath was undergoing an operation in Goalpara Civil hospital. and Mahesh himself said that he was almost like a "bhagi" to their family. She was second wife of Mahesh Nath, and they had four daughters from the first wife and two sons and a daughter by her. She further said that after the death of her husband the then AGP M.L.A. never visited their house, while Mr. Jyotish Das, M.L.A. from East Goalpara came, consoled her and tried for her appointment and himself handed over the appointment letter to her as a School teacher and she used to get Rs.5,200 as salary per month.

P.W. 3 Shri Puran Ch. Nath, deposed that his elder brother Mahesh Ch. Nath, was a student leader and was close associate of Jyotish Ch. Das and a confident of AASU president Shri Prafulla Kumar Mahanta during the Assam Agitation, but during the second stint of the AGP Govt, he became critical of some of that Govt's activities and started openly criticizing the Govt activities, and thus incurred the displeasure of the Govt and perhaps, that was the reason why he was killed by "secret killers". In cross-examination Puran said that he lodged the ejahar at the Krishnai Outpost and the receiving I/C asked him to produce the two persons with whom Mahesh Nath was last seen together. Nirmal Biswas and Bhagirath Nath were produced and he asked what happened. Bhagirath said that when they three were going from Paikan, a white Maruti van intercepted by blocking the way and dragged Mahesh Nath into the vehicle, and when Mahesh resisted, he was surrounded by 5/6 tribal looking face covered persons, at gun point, and forcibly made him board, and sped away. Bhagirath was a co-villager and theatrical performer. The witness also suspected Nirmal Biswas and he said so to police. He also said that they were not at all satisfied with the investigation of the case by police; on the other hand about six months of death, they were called to the Outpost and were asked, by the same person to whom the FIR was submitted, to withdraw the case altogether and took our signature on a written white paper.

N.W.2 Shri Upendra Chandra Bora the then Inspector and O.C. of Goalpara Sadar P.S. deposed that on 2.1.99 an FIR was lodged at the Krishnai Outpost of Dudhnoi P.S. and the In-Charge of Krishnai Outpost, after making a G.D. entry, forwarded the same to the O.C. of the Goalpara Sadar P.S. On receipt of the FIR, and making a G.D. entry, registered the Goalpara P.S. case No 1/99 and entrusted its investigation to S.I. Shri Kamal Bora In-Charge of Agia Outpost of Goalpara P.S. However, the responsibility of supervising the investigation of the case remained vested in him as O.C. In view of that responsibility, he proceeded to the place of kidnapping, i.e., Tukura in Bhimajuli Muslim para by the side of N.H. 37 between Goalpara and Guwahati. The I.O. also accompanied him to the P.O. and examined the spot and some of the villagers in his presence. The bicycle and two bags, one red and the other green, of Mahesh Nath which were at Tukura were seized and brought to Bhimajuli. The dead-body of Mahesh Nath having been found within the jurisdiction of Krishnai outpost under Goalpara P.S., it entrusted its investigation to Shri Sarat Das to investigate the case and Shri Das completed the inquest and the post-mortem examination and forwarded those papers to Goalpara Sadar P.S. With the Goalpara I.O. the O.C. then proceeded to the P.O. of murder of Mahesh Nath at Naothowa village and re-examined all the witnesses already earlier examined by Krishnai I.O. and engaged sources and undertook searches and raids in Garopara and Takobari forest villages on suspicion of one John Clip Sangma of Garopara village was not available. However, John Clip having already been arrested in connection with another case by application he was shown as arrested in this case and he was taken into custody but when no clue was available from him, he was reverted to Court. Having found no clue he, as C.I. suggested that the case be returned in F.R. and the Addl. S.P. (HQ) approved the same in F.R. No. 45 dated 27.5.200 and the same was forwarded to C.J.M., Goalpara for acceptance, the complainant being notified of F.R. by the I.O. of the case, within less than six months of the date of occurrence.

The C.D. shows that the S.P. Shri T. Thangneu issued a suoervisory note on

Shri Bora said that at the time of kidnapping Mahesh Nath was not alone but with two other persons, Shri Nirmal Biswas and Bhagirath Nath.. Nirmal Biswas was examined on 10.5.99 while Bhagirath was examined on 4.1.99 Nirmal Biswas was avoiding police and so he could not be examined earlier, but he was not suspected as Bhagirath already gave the story earlier and none suggested Nirmal Biswas as having something to do with the killing. Answering a question as to whether they suspected SULFAs the O.C. replied that there was nothing to link the SULFA. In this case and therefore they did not suspect any SULFA in this case. He said that he heard that some ULFAs, and their family members were killed earlier but he did not know that SULFAs were

involved in such cases, though he knew about there having been a clash between the ULFAs and the SULFAs. He however admitted that it was a principle of investigation that a person who had any enmity or bad relation with the deceased had to be interrogated. But, he said that there was no SULFA to be suspected that way at Goalpara. To a question as to how he distinguished between a SULFA to be suspected and one not to be suspected, he replied that they were not suspected because he did not find any clue against them. He admitted that it was not the principle that unless there is some clue none should be interrogated. He also admitted that he could arrest a person on suspicion and that suspicion and clue were not the same thing. He said that Mahesh Nath criticised the functioning of the then Government, but he did not then know that he was an ULFA though he later came to know that he was. He denied the suggestion that Mahesh Nath was critical of the Government and thereby earned displeasure of the Govt, and that was why he was killed; and that the police knew who were the culprits and therefore made the investigation as an eye-wash and did not find any clue. It is correct that that Clue means trace or track. Clueless means trace or trackless. The trace or track was laid by the vehicle that took away Mahesh Nath, and that was told by Bhagirath and Nirmal Biswas. But there was no investigation pursuing the vehicle and the person...

On the basis of evidence as discussed above the fact that Mahesh Nath was an ULFA and after he was jailed for five years, he was silently serving as a school teacher and also as an Adviser of MASS. That he incurred the displeasure of the then AGP Government led by Shri Prafulla Kumar Mahanta by criticising its activities and also joining the New A.C.P. were established, the statement that he was killed by the Prafulla Kumar Mahanta's faction was also not belied by any evidence. So the perpetrators could be identified on that basis. There were 4/5 persons in the vehicle that intercepted Mahesh Nath's bicycle at Tukura near Muslimpara in kidnapping him therefrom. As Mahesh Nath was last seen together with them, they are to be held liable for his death unless otherwise explained by them. This has not been done in evidence. The collection of the information about the last journey of Shri Mahesh Nath from his elder sister Panchami's Paikan house could have involved several persons. The vehicle arrangement was another joint function. Thereafter Mahesh Nath's dead body was found under Krisnai Outpost, it was found under Agia outpost and information was given by that outpost. It was learnt that there was a SULFA camp at Dudhnoi and another at Krisnai. In the case of Tapan Das it was stated by a witness that there was a small SULFA camp at Krisnai outpost area and another under Dudhnoi P.S. area. The SULFA camp of Bapujinagar has been prominent in the sense that in some cases inmates of that camp have been named along with some SULFAs of Dudhnoi SULFA camp. It was also learnt in Smti Ruma Brahma's case that Shri Rinku Chaudhury of Dudhnoi had an Ambassador car, and the SULFAs of Dudhnoi camp used a Maruti van. In this case there was some discrepancy as to whether the second vehicle was a van or a Gypsy. While the first information mentioned of Gypsy, Bhagirath and Nirmal mentioned van. From the facts of the Goalpara cases it appears that the killers need not necessarily be of the place or police station of the crime. The white Ambassador, the white Maruti Gypsy and the White Maruti van have been more or less common vehicles; and those have always been numberless or "A.F."s. (Applied for).

This case was the third of its kind in Goalpara district and the contours of criminality are now prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Goalpara area itself. An almost permanent SULFA camp at Goalpara Town has been accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost area. These have been emerging as important features to be considered in this type of cases, particularly when the dead body of the victim was found at Krisnai, and informed. The SULFAs of

Dudhnoi SULFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

Considering the evidence in this case in light of surrounding circumstances, particularly the patent Police-SULFA unholy nexus, the identity of the killers, may be confined to Shri Bhagirath Nath of Agia, Shri Nirmal Biswas of Bapujinagar (the two persons with whom Mahesh Nath was last seen together), some car owning SULFAs of Dudhnoi and Krisnai SULFA camps at that time, along with few leading SULFAs of the then Bapujinagar SULFA camp of Goalpara. The accomplices may include all those who excited, instigated aided, abetted, helped or facilitated, individually, or institutionally, in the kidnapping and killing of Shri Mahesh Nath as evident in this case.

(C) To find out whether there was conspiracy in targeting and the motive behind killing..

This term is replied in two parts, namely, conspiracy in targeting, and motive behind killing..

1. Conspiracy in targeting Mahesh Nath. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:

"when two or more persons agree to do or cause to be done .-

'(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the material act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy , and in order to the doing of that thing ; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of the earlier report; and the same is referred to...The question whether there was any conspiracy or not in the killing of Mahesh Nath has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators ?. It is in evidence that Mahesh Nath was earlier arrested and convicted in a bomb blast case and jailed for five years, and the fact that two persons participated in the act of accompanying him at the time of his kidnapping and with whom he was last seen together in the fateful evening, and his dead body found at Krisnai and taken to Agia outport, there can be no other answer than that there was criminal conspiracy in the killing. It is also in evidence that

.the then Chief Minister himself persuaded the members of ULFA families to make their ULFA members to surrender, and sometimes forewarned them that consequences of failure to do so will not be good for them, Mahesh Nath having been in the AGP, later defected and joined the New A.G.P. led by Late Bhriku Kumar Phukan also made him an eye shore for The then Chief Minister Shri P.K. Mahanta, who reportedly did not take it kindly, was another axe for the unholy nexus to grind.

.There is also evidence to show that the SULFA camps were in touch with the police. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Mahesh Nath there were more than 5/6 persons in the act of kidnapping. As mahesh Nath was last seen together with them, they must be held to have been his killers..There was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the acts of kidnapping and killing, and the premature submission of F.R. without finding any clue, show that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, it has to be held that there was conspiracy in the killing of Mahesh Nath...

II. Motive. behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of P.W 1 that during the Assam movement Shri P.K.Mahanta, the then President of the AASU, subsequently the Chief Minister of Assam, Shri Akan Rabha and many others visited Mahesh Nath's house . When the AGP split into two, around 1991, namely, the AGP and the New AGP, Mahesh Nath and his friends sided with Bhriku Kumar Phukan, and consequently, Mahesh Nath and his friends became eye sores to the other group, namely, that of Prafulla Kumar Mahanta. It was Birendra Kumar Nath's firm belief that Mahesh Nath was killed as a result of this political rift by Mahanta's group. The witness stated so to an earlier investigation team which recorded his statement and suggested to him to state that Mahesh Nath was killed two days earlier than 1.1.99, which he refused to do and repeated that Mahesh Nath's death was a secret killing orchestrated by the then Govt. of Prafulla Kumar Mahanta.P.W. 1 said that Mahesh Nath was arrested by police about two years before the incident, but he was not a SULFA. Could Mahesh Nath have been arrested suspecting him to be an ULFA? In one of the progress reports it is said that Mahesh Nath was an ULFA but he left it and was carrying on agriculture, and he became an Adviser of MASS. In that case this may be treated as ULFA related case. In either caase the motive behind the killing is explainable as perpetuation of A.G.P. rule by getting rid of the ULFAs, their family memvers and their relatives

The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in deposition of the then Chief Minister Mahanta. A course of conduct by different agencies towards similar persuatuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family, and thereafter arresting and finally culminating in his killing support such a conclusion. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the ULFAs should be arrested and tortured under IADA, and when even then they failed, they should be secretly killed? The manner in, the weapons with

which the victim has been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remote-orchestrated. Those in helm of those departments must be held liable and must be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt.

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in the killing.

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such measures as could help us in pinpointing responsibility on the persons involved.

Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The Best Evidence Rule "Phipson on Evidence," 9th ed. P. 51, under caption "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits.' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible,

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual

perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of the first group of seven cases are also found in this case while answering its terms of reference so as to justify the same finding of a general plan of "Ulficide", that is, deliberate killing of ULFAs and their families and relatives, on their basis, namely :

1. That this killing involved an ULFA family, being that of the ULFA Shri Mahesh Nath who was also Adviser of MASS .
2. Unlike in other cases, this kidnapping was done in the afternoon, but the killing sometime thereafter, the exact time being still secret.
- 3.. The assailants remained secret, having not being identified or recognised by anyone..
4. The weapon used in killing was a sophisticated firarms, a rifle, of prohibited bore as there was a vertical lacerated injury about 2 inches wide on the left side of the neck, destroying underlying curves completely. The entry and exit point could not be indicated as the entire muscle of the neck was blown off by the bullet., such injuries being generally found in police-military situations.
5. The firearms being of prohibited bores, forensic examination of the empty bullet cases was deliberately avoided...
6. The vehicles used were reportedly a Maruti Gypsy (or van) and an Ambassador car of which particulars were not noted by Bhagirath and Nirmal Biswas, and those were never seized or taken into custody. .
7. There was no mention of police patrolling in the kidnapping and killing areas..

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the kidnapping and killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and sometimes masked persons to shoot /them dead or take them away and kill them secretly and throw the bodies somewhere,. In this case the lifting was in the afternoon and killing elsewhere sometime later.

9. There was general resentment and decry against the Unified Command Structure/ Chief Minister..

10. There was connivance of SULFA; and deliberate omission to make any SULFA an accused despite the fact that Bhagirath and Nirmal Biswas having been present at the time of lifting, and Nirmal Biswas having concealed himself for a long time after the incident...

11. The investigation did not commensurate with the seriousness of the crime perpetrated. No clues were said to have been found and, the case was returned in F.R.(Final Report) prematurely in abuse of the process of the criminal Court..All Goalpara cases ended in premature F.R.s.

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. No condolence message was sent from the then Govt. of Assam to the victim family.

14. No ex-gratia/compensatory payment was made or offered by the then Govt. of Assam. in this case However an employment was provided to the widow Smti Kusum Bala Nath..

15 In this case death penalty has been imposed for "status offences," on Mahesh Nath for being a member of ULFA.

15 That in all the cases, including this case of Mahesh Nath, there had been remote- orchestration of Ulfocide, death penalty having been imposed on the victims in this case for being member of ULFA. .

16. That from evidence of this case, as in all other cases, "remote- orchestration" of "Ulfocide" is deducible These common characteristics, along with evidence, prove beyond reasonable doubt, remote-orchestration of "Ulfocide" from "Home", through Police-SULFA nexus using some SULFAs as the striking arms or executioners. The authority must be held liable and be dealt with according to law. This case deserves re-investigation on revival. Case records will be sent back...

This conclusion is based on evidence of each and every case and the similarities of the cases in almost all respects, which could not have been so otherwise. The remote must have been at Home Ministry.. The pinpointing responsibility is on basis of identity in "B" Considering the evidence in this case in light of surrounding circumstances, particularly the patent Police-SULFA unholy nexus, the identity of the killers, may be confined to Shri Bhagirath Nath of Agia, Shri Nirmal Biswas of Bapujinagar (the two persons with whom Mahesh Nath was last seen together), Shri Rinku Choudhury who had a white Ambassador car, the SULFAs of Dudhnoi and Krisnai SULFA camps at that time, along with few leading SULFAs of the then Bapujinagar SULFA camp of Goalpara, The accomplices may include all those who excited, instigated aided, abetted, helped or facilitated, individually, or institutionally, in the kidnapping and killing of Shri Mahesh Nath as evident in this case.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an

arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed in restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. No doubt the Union of India has the duty to protect the State from internal disturbance and external aggression under Article 355 of the Constitution of India. There has been no question of external aggression of Assam. Our internal disturbance is our own creation, and if we can ourselves solve that disturbance there will be no need for central deployment in the matter. The centre also knows that every one in Assam is a citizen of India and not a foreigner or alien. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" Sukracharya's *Dandaniti* is based

on *danda*, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars, workshops, discussions on different aspects may be helpful in sharing and updating information, knowledge and experience.

Regarding the SULFAs pinpointed, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea..their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, but using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Those who committed crimes will surely be brought to justice. Let the others now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether.

Insolvency principle is not applicable in criminal matters.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities also shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their own governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. Insolvency principle does not apply in the criminal field.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gracia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. In this case the widow Smti Kusum Bala Nath had to feed and bring up six children after death of Mahesh Nath. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, Assam, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the widow of the victim Smti Kusum Bala Nath, for the benefit of the family, a sum of Rs.5,00,000 (Rupees five lakhs) only forthwith. More than seven years have already elapsed, and it brooks no farther delay.

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(11)

SHRI DHANESWAR & SMTI SUSHILA RABHA KILLING CASE

(Rangjuli P.S. Case No.3/99)

(Date of occurrence. 9.3.99.).

By this Commission's order dated 3.4.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

- “(a) Circumstances , in each case, leading to the killing of its victim(s).
- (h) Identity of the killer(s) and accomplice(s), if any.
- (c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).
- (d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)
- (c)To make recommendations to prevent recurrence of such killing(s)

(f) Any other matter related to or relevant to the purpose of this inquiry.”
These terms are discussed below.

“(A) Circumstances leading to killing of Dhaneswar Rabha & Sushila Rabha.

On 9.3.99 at 7.45 A.M. Shri Gudhir Bantho, son of Late Parimal Rabha of Belpara lodged an Ejahar at the Rangjuli Police Station to the effect that the same day at about 2 A.M. some unknown assailants came to his elder brother Dhaneswar Rabha's Belpara village house and shot him and his wife Sushila Rabha dead and left. As P.W. 1 Gudhir Bantho, younger of Dhaneswar Rabha, later said that on the night of 9.3.99 while sleeping at his Belpara village house there was a Sraddha ceremony in a neighbouring house at night which his elder brother Shri Dhaneswar Rabha and his wife Smti Sushila Rabha and their two sons also attended. While Dhaneswar and Sushila returned home, at about 12 midnight, their two sons slept in another brother's house. Gudhir's house was about 15 metres away from that of his elder brother Dhaneswar. At about 12 midnight Gudhir and his elder brother Dhaneswar and his wife Sushila were sleeping in their respective houses, He (Gudhir) was awakened by dog's barking sounds, and he thought that army or police might have come to Dhaneswar's house, as they very often used to come. But a little thereafter, in slumber he heard someone calling “O Uncle O Uncle” followed by very powerful and continuous firing sounds, so violent that his own house was also rocked. Then he heard his elder brother shouting *hai hai marili marili*. (hai hai killed, killed) and a second later he heard his sister-in-law also saying “*ki karili baba*” (What have you done, Baba) Thereafter also he heard sounds of three firing shots. Gudhir and his wife came out of their house up to the plum tree but then in moonlight saw some men who could be the assailants, coming that way and his wife pulled Gudhir back inside their house in fear. By about 4 A.M. they mustering courage proceeded to Dhaneswar's house and found him lying dead, still holding a lantern, in pool of blood and saw bullet injuries on his head and chest. Searching for their sister-in-law Sushila, they found her dead body ¼ metres away from that of Dhaneswar towards the cowshed, also in pool of blood.

P.w.3. Dr. Buddheswar Mazumdar found the following injuries on the dead body of Smti Sushila Rabha in post-mortem examination.

(a) A clean incised wound in front of left lower abdomen exposing loops of intestine; (b) An entry wound circular 2 cm in diameter on the back of right chest, 3 inch lateral to midline at level of 8th thoracic spine; (c) An exit wound, oval with irregular margin on right exila muscles, subcutaneous fat coming out through the wound 3 cm x 2.5 cm; (d) An entry wound 2 cm x 2 cm round, margin is blackened, on inner aspect of middle of right arm; and (e) An exit wound on lateral aspect of middle part of right arm with multiple fracture of right humerus. All injuries were antemortem and death was caused by shock and haemorrhage due to bullet injuries and sharp cutting injury..

On the dead body of Dhaneswar Rabha following injuries were found. (a) A clear incised wound over right little finger in the middle. (b) One oval (1.5 cm x 2 cm) in size entry wound in front of abdomen over the right sub-costal margin in midline, the surrounding skin is black, margin is smooth (c) An exit wound over back of chest at level of lumbar 2nd vertebrae in midline (3.5 cm x 4 cm) portion of subcutaneous tissue, fat coming out through the wound; and (d) A sharp incised cut wound over back of chest in the inter scapular region (2" x 1") underlying subcutaneous tissue are cut. Death was due to shock and haemorrhage caused by all the above antemortem firing and homicidal cut cut injuries..

(B) The identity of the killers of Dhaneswar & Sushila, and their accomplices, if any

The killings of Shri Dhaneswar Rabha & Sushila Rabha were secret not as to time and manner of killing, but as to identity of the killers and their accomplices, if any. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the

crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

The identity of the killers and their accomplices, if any, has to be based on evidence. From the words uttered by Dhaneswar and Sushila Rabha before they were killed, as stated by P.W. 1, the former saying "hai hai marili, marili" that is, "hai hai you killed, you killed" and by Sushila "ki karili baba" (Baba, what have you done) may indicate that the killers were Assamese speaking. Sushila's "Baba may also mean that the killer was known to her. Both the deceased appeared to have addressed those words to the respective killers. This is of course an inference, as no witness was asked this question. P.W. 1 Gudhir Bantho said that Army and Police people used to come to Dhaneswar's house, mostly at night. This raises a suspicion as to whether the killers were some such persons.

P.W. 2. Shri Rahit Rabha, a teacher in Goalpara Suterpara L.P. school, and a journalist, sending reports to the Assamese daily "Pratidin", published from Guwahati, stated that there was regular checking of the vehicles on the road near Rangjuli I.B. But surprisingly, on that night there was no checking there. From that the witness believed that the Government was involved in the killing of Dhaneswar Rabha and his wife. He further stated that whenever such secret killings took place and ejahars was to be lodged, the O.C. s of the Police stations were invariably absent, and that this also led to their being already aware of the respective incidents. Shri Rahit Rabha also said that he wrote the Ejahar on request of Gudhir Bantho who signed it in his presence; and he accompanied Bantho to Rangjuli Police station to lodge it. He deposes that, though he was an eye witness, he collected some information from "Pratidin", but had not brought the newspaper copy. His statement was: "On that fateful night of 9.3.99 2 or 3 Maruti vans and Zypsies were parked on the road leading to Belpara village at a distance of about 150 metres from the house of Shri Dhaneswar Rabha. The vehicles were parked in front of the house of Koren Rabha and Sankreswar Rabha. This Koren is one of the younger brothers of Dhaneswar Rabha. The killers ran towards the vehicles after the incident. Before boarding at the vehicles they fired at random may be for scaring away the people. However, one of the assailants was left behind and (he) ran through the compound of Sankreswar Rabha. He ran over a bucket rest near an underwell. This was seen by Anima Rabha, but out of fear nobody intercepted him and the man escaped. There was a paddy field. Immediately next to the compound of Sankreswar Rabha. It was presumed that the man escaped through the field and there are some bushes in the field and the people believed that the escapee took shelter under one of these bushes. In those days by the term "Gupta Ghatak", people held some sulfamen who were, namely, Roosevelt Rabha, Bimal Rabha and Rinku Choudhury. In the morning one Ajoy Rabha came by the house of Bimal Rabha the sulfaman. Bimal Rabha was a married man and he heard the weeping of a woman who was crying "where her husband (Bimal Rabja) had gone". Then a red Maruti van belonging to Bimal Rabha came out of his house and moved fast towards Rangjuli. Another man saw that Maruti van stopping near the P.W.D. I.B. at Rangjuli and one man was seen boarding that Maruti van hastily. To his knowledge Roosevelt Rabha and Bimal Rabha are still alive. and that Bimal Rabha was involved in this incident. As the said red Maruti vehicle retired to Amjonga from Rangjuli., the witness thought that the the left- behind escapee was none else than Bimal Rabha and that is why his car was taken out to rescue him and take him back home, as the cry was heard from the house of Bimal Rabha. This witness was thoroughly cross-examined but the statements were not shaken or rendered doubtful. The witness personally knew Roosevelt Rabha, Bimal Rabha and Rinku Choudhury, all SULFAs moving together in Maruti Gypsies, Maruti vans and also cars. Bimal Rabha had a Maruti van. The Maruti Gypsy and the Maruti van used by them did not display registration numbers. They were very often seen in the Hollywood Hotel at Habib Market, Goalpara.

Pursuant to a notice under section 8 B of the Act Shri Bimal Rabha examined himself and was cross examined and was permitted to cross-examine Ruhit Rabha later. on 24.11.2006 at Goalpara..Bimal Rabha in an application took the plea of mistaken identification saying that his name was Bimal Prasad Rabha and not Bimal Rabha. However the service report showed that his elder brother received the notice bt that name as he was reported to have been staying in Guwahati engaged in business, Hence the plea was rejected, His prayer for time was also rejected owing to paucity of time. In examination-in-chief Bimal Rabha stated that he did not know Shri Rahit Rabha who made the allegation and that what were alleged against him were imaginary and concocted; that he did not know anything about the incident and that he has married and has two elder brothers were employed, while his younger brother is not employed..Cross-examined he said, inter alia, that he knew the Belpara village which was about 16 k.m. from his Amjonga village house; that he never visited Belpara village that he came to know about the Dhaneswar and Sushila Rabha killing case from discussion among his Amjonga villagers; that he heard some people talking that Dhaneswar and Sushila's son Manoj was an ULFA; but he did not hear the name Dristi Rajkhowa, and that there was no other person in Amjonga, Belpara and other villages or among the ULFAs and the SYLFAs, so that he was the only person to have been referred to as Bimal Rabha.

Shri Bimal Rabha also stated that he was married and that his wife stayed with him at Dudhnoi where his first son was born in 1997 and his second son was born in the year 2000 at his father-in-law's place at Kahilipara, and he later added, that his wife was there in 1999. He has been engaged in coal business since 2001 in Guwahati Beltola, but not as member of any syndicate of SULFAs, and he knew that there was coal business at Goalpara. also, but did not know whether it was run by SULFA syndicate; that he did not own any vehicle till about three months back when he purchased one "Scorpion" vehicle.; that he did not know whether any one from Amjonga village owned any Maruti Van around the year 1998/99; that Amjonga was about 6 k.m.s from Dudhnoi; and that his bicycles repair and sale shop was about half k.m from Dudhnoi P.S.. He knew Shri Rusevelt Rabha as Rusevelt used to come to Amjonga village..

To a question whether he was never in the ULFA, Bimal Rabha replied that he was in the ULFA, since after his passing of the High School Leaving Certificate Examination; that his alias was Suruj Bora, he was in the cadre of ULFA, he did not take any arms training; and that he surrendered before the D.C. Goalpara in 1993 and received a sum of Rs. 2,00,000 (Rupees two lakhs as business loan which he has not so far repaid. Bimal Rabha also said that he has been engaged in business since 1996, presently he is in coal business at Guwahati where he is staying. He passed Higher Secondary Examination

Bimal Rabha, in reply, said that he did not feel any uneasiness after surrender from the ULFA and that he never received any threat from the ULFA. There was no request from the Army or police to him to persuade ULFAs to give up violence and return to the main stream. He denied the suggestion that he was in fact involved in the killings of Dhaneswar and Sushila but deliberately suppressed the truth,

Bimal Rabha said that he did not know whether there was a SULFA camp near Bapuji Nagar in Goalpara Town and who were the SULFAs staying therein. He did not know anything about Dhaneswar and Sushila Rabha killing case, and did not remember the names of persons from whose conversation he learnt about the incident. He denied the suggestions that he was deliberately concealing the truth from the Commission; and that he did not know if the killings were State-orchestrated using the concerned SULFAs, including himself, as the striking arms or executioners..

Bimal Rabha knew Rusvelt Rabha who used to come to Dudhnoi, but had no occasion to talk to him. He joined the ULFA in 1988 and surrendered in 1993 His function was fixing of banners and posters in suitable places. On surrender Govt. gave him Rs.2,00,000 as loan. which he has not repaid as yet. He

said that the allegations against him were imaginary and concocted. Mr Jayanta Deka, the learned counsel for Bimal Rabha argued the case of Bimal Rabha, but could not cause any dent on the allegation. Neither Bimal Rabha nor his learned counsel was present on the notified date for cross-examination of Rahit Rabha who was present for the purpose. Even then his counsel was heard by the Commission..

N..W. I Shri Prabhat Bora, I.O. said that he examined Shri Gudhir Rabha and Ruhit Rabha, inmates, but they could not give any clue. He then proceeded to Sutarpara village and examined some inmates of houses who also could not give any clue. After the S.P gave him some verbal instructions and a supervisory note, he went to Belpara again and examined six witnesses. One Smti Anima Rabha told that she heard sound of vehicles and the assailants "and then she heard three muffled firing sounds." On 14.3.99 he proceeded to Thakuriapara village, about 3 miles away, suspecting one Dhana Kachari but on examination no clue was found. He also went to Garopara village and examined one Dhana Kachari and Bhupen Kachari and Roma Boro, but yet no clue found. He examined one Dilip Bora of Gorpara village, as his name was in the air, but with no positive result. He even went to Darranggiri bazaar and examined some persons and searched houses, but still without clue. He was transferred out and he handed over charge on 20.1.2000. From his efforts it appeared that he perhaps, believed the assailants to have been local Assamese speaking tribals of the area. But look, he also wholly forgot the case of SULFAs of the SULFA Rehabilitation camp at Goalpara which was, by car, not very far off...

In cross-examination by Shri P.K Musahari Shri Bora said that Gudhir's house and Dhaneswar's would be 20/25 metres apart; and that both were cutcha houses. He also disclosed that while being examined u/s. 161 Cr.P.C. Gudhir Bantho told him that Dhaneswar's son was in the ULFA. This was significant for the I.O. never analysed the problem of clue on its basis, though he was aware of this line of cases of killing relatives of ULFA members, and that he even knew that Manoj Rabha's alias in ULFA was Dristi Rajkhowa. He also said that he knew about Manoj Rabha as ULFA as his name was in police records and that he (Manoj Rabha) was wanted in connection with a number of cases. The fact of the I.O. never having applied the SULFA hypothesis as in other cases of the line, showed that the I.O's investigation was a mere eye-wash; and that he even knew who were the culprits in this case. This was also indicative of unholy police-SULFA nexus so that the image of SULFA never occurred to the I.O.s in this line of cases. It was not known whether or not this factor was or was not in the minds of the higher officers also during supervision of investigation. There is no indication in the Case Diary. However, when Manoj Rabha's name was in the records maintained by police, and when he was wanted in several cases, in all probability, it was in the minds of higher officers also. There was instruction to nab him, but there was none for persuading him to return to peace talks. The I.O. did not know SULFA boys of neighbouring areas, The Police station did not maintain any list of SULFAs, but the attached S.B, did. The I.O. visited Manoj Rabha's house 6/7 times before the incident and told his father that long enough time had elapsed and that he should persuade Manoj to surrender. I.O. also admitted that Dhaneswar was told that should they fail to persuade Manoj to surrender, the consequences for the family would not be good. It is also in evidence that the O.C. of Rangjuli P.S. also visited the house of Dhaneswar and sometimes with outsiders, and similarly suggested and cautioned Dhaneswar and his family. The I.O. also knew of similar recent cases in the State and killing of members of ULFA families.. He was also aware that there was some conflict between the ULFAs and the SULFAs. On basis of those facts, he was asked:

Q. Were you aware of such killings of ULFA family members also took place in the district of Goalpara?

A. I did not know otherwise, but I read in newspapers.

Q. Did any suspicion or idea come to your mind that the killing could have been the handiwork of some SULFAs?

A. That idea did not come to my mind.

Q. Was there any precise reason for that idea having not occurred to you at the appropriate time?

A. There was no specific reason.

Q. Did you interrogate any SULFA person in course of your investigation of this case?

A. No. no SULFA person was examined.

Q. I put it to you that you knew that this killing was done by SULFAs being in unholy nexus with the police and that you had instructions from your superiors not to investigate or involve any SULFA with the incident and that is why you deliberately did not do it and you have suppressed the truth to this Commission.

A. It is not correct.

One interpretation might be that the killing was not for SULFAs themselves, but for the State's policy, to be executed by the Police, and hence SULFAs were not the killers but only instruments for the killers, and that is why the unholy nexus between the two..

N.W.2. Shri Abdus Sattar Paramanik, who was the next I.O, received the case diary on 1.2.2000, and following up the Supervisory note visited the place of occurrence on 15.3.2000 and discussed with sources and engaged new sources on 15.5.2000, but no clue was available. Discussed with newly engaged sources on 15.1.2001 and discussed with it on 15.4.2001 and yet not having any clue, he opted for awaiting direction from higher authority. On 18.3.2001 he received the approval order of returning the case in F.R.(Final Report) and prepared the Final Report, being F.R. 5/21 dated 18.3.2001 and submitted to the Learned C.J.M., Goalpara who, after notice to complainant, accepted the same on .6.2001..

The final position was that no clue at all was found; and the vehicles used also could not be located and F.R.(Final Report) was submitted. on 18.3.2001

I.O. Shri Bora recovered and seized 5 No.s of empty cartridges but he did not send those for forensic/ballistic examination.

Shri Deepak Kumar, I.P.S. the then S.O. of Goalpara district, deposed that Army was not deployed in Goalpara district, but the Unified Command Structure was applied to that district; and that he, as the Army and CRPF did, attended the meetings of the District Level Co-ordination Committee of the Unified Command Structure in his district and the scheme was to hold one meeting every month..

(In Dinesh Ch. Rai Killing Case, Goalpara P.S. case No. 231/99, we find the following:

In cross-examination by Dr. Y.K. Phukan, Mr. Kumar said that he attended all the meetings of Deputy Commissioners and S.P.s of the districts organized by the then Chief Minister Shri P.K. Mahanta apparently to discuss law and order problem, but he did not remember how many times, and that without seeing the minutes he could not say whether there were discussions about the killing of members of ULFA families, or progress or investigation status of such cases. He also said that in the meetings of high police officers organized by the DGP the question of investigation status of cases involving killings of members of ULFA families inquired into or discussed, the reply was that in such

type of meetings, the In-Charge of CID, Police Headquarter discuss about the progress or investigation failures, if any. Mr Kumar also answered that while he was S.P. Goalpara, the IGP(Operations) was Shri G.M. Srivastava, and he attended all the meetings called by the then Chief Minister Shri Prafulla Kumar Mahanta, and also all the meetings called by the then DGP, Assam.; and that Shri Srivastava used to advise them "to control the situation in a better way")

The question arises as to whether what has been seen in the series of Goalpara cases, namely, secret killing, failure to find any clue, despite the inmates of the victim family suggesting clues, and premature submission of F.R (Final Report. can be understood to have been the "better way" to control the situation.?

Being asked as to whether the investigation in this case was carried on intelligently, vigorously and properly, Mr. Kumar replied that he expected his fellow officers to do so; and that a case ending in F.R. did not mean that the case was closed, and the case might be re-opened and re-investigated. Replying to a suggestion that the police knew who were the culprits, but deliberately did not pursue to nab them under the influence of higher ups with ulterior motive known to them, the S.P. replied that it was not correct as "the police only followed the rules and law laid down by the Constitution". To the suggestion that in all the cases of killings of members of the families of ULFA Chairman Shri Arabinda Rajkhowa, Cultural Secretary Shri Mithinga Daimary, the Foreign Secretary Shri Sacha Choudhury, the S.P. replied:"it is true that series of cases took place in Assam and it was investigated properly as per law, especially in the case during his time in Goalpara, but it was not correct that the police were involved in the cases with the SULFAs as no clue established in this connection. Moreover, they join police to safeguard the people in society and they are bound by law and no questionarises about the nexus with anti-social elements." What have been said by Mr.Kumar might have been the ideal position, but the actual ground realities, as have been revealed in the cases under inquiry, prove just the opposite and are so horrible as to confirm just what have been suggested to the witness. This indicates lack of knowledge of prevailing fealties by appropriate authorities in the Department in the district..

On the basis of the evidence, it is reasonable to believe the statement of Rahit Rabha as regards Shri Bimal Rabha having been one of the assailants. firstly, it is not likely for Rahit Rabha to concoct the story of Bimal Rabha having been left behind under those circumstances from one's pure imagination. The statement is studded with vivid details as to how Bimal ran, trampled over a bucket near a well, ran through fields and forests, concealed in a bush, how his wife wailed, how the red Maruti arrived and Bimal got into it, and how the red Maruti sped away towards Ranfjuli. The following information from Bimal Rabha would fit into the story, Bimal Rabha on date of occurrence (9.3.99) was married and his wife was with him, He did not say that on the date of occurrence his wife was not staying with him or that she was in her father's place for the whole of year 1999. His second son was born in 2000, the exact date not stated. The different stages of his escape could not have been imaginary and concocted in a tribal rural society of Belpara, as it is realistic in the rural surroundings. The deliberate suppression of the truth by Bimal Rabha is clear.

On prayer of the learned counsel for Bimal Rabha, he was allowed an opportunity to cross-examine Rahit Rabha on 25.11.2006 at Goalpara, but on that date while Rahit Rabha appeared for being cross-examined, neither Shri Bimal Rabha nor his learned counsel appeared before the Commission on that date. though the date was fixed in presence and with the consent of Shri Bimal Rabha and his learned counsel. There was, thus, no violation of the principle of natural justice. Even so, the learned counsel was heard, but there was no dent on the allegations and the left-behind story..

In the matter of pinpointing responsibility, it is to be noted that the crimes may not always be taken to have been committed by some persons belonging to the locality, the police station area or even of that district. With the phenomenal increase in facilities for quick mobility it may be more

likely by distant people. In course of investigation of the Goalpara district cases, it was learnt from the S.P. himself that there has been a SULFA rehabilitation camp at Bapujinagar in Goalpara Town with about 56 SULFA inmates and there was no roll call to ensure constant presence of them in the camp and some of them were also allowed to stay at their respective homes. There was also one small SULFA camp at Dudhnoi at the residence of SULFA leader Shri Rusvelt Rabha, and another small camp at Krisnai. There is no report about Rangjuli in this regard. It was further learnt from evidence that Shri Rinku Chowdhury of Dudhnoi has an Ambassador car and he used it. It was also in evidence in Smti Ruma Brahma's case that the SULFAs of Dudhnoi camp used a white Maruti van. It was also learnt in Smti Ruma Brahma's case that Shri Rinku Chaudhury of Dudhnoi had a white Ambassador car, and the SULFAs of Dudhnoi camp used a Maruti van. From the facts of the Goalpara cases it appears that the killers need not necessarily be of the place or police station of the crime. The white Ambassador, the white Maruti Gypsy and the White Maruti van have been more or less common vehicles; and those have always been numberless or "A.F."s. (Applied for) Bimal Rabha's red Maruti has added colour to the series..

The white Maruti Gypsies, commonly associated with the Police, have been reportedly used in secret killings. The question of availability of the prohibited bore weapons used by the secret killers is another problem. The police explanation has been that those are available with the extremists, but in no case it has been shown which were those extremists. This confusing scenario has to be borne in mind in determining identity of killers along with the evidence of a case for deciding beyond reasonable doubt. The investigation has not been found to be up to date in this regard.

Shri Bimal Rabha's cycle repairing shop was about 6 kms from Dudhnoi. He did not know about the Bapukinagar camp, but he knew Shri Rusevelt Rabha who belonged to Dudhnoi. Shri Rinku Chowdhury was Rusevelt Rabha's brother-in-law. The vehicles after the killing came towards Rangjuli wherefrom the red Maruti car of Bimal Rabha came for his rescue and where to it returned. The other vehicles must have returned that way. So it could be more reasonable to confine the identity of the killers in this case to the SULFAs of Rangjuli Dudhnoi side with Shri Bimal Rabha as one of the assailants.

The accomplices will be all those who either singly or institutionally aided, abetted, instigated, facilitated and helped the killers including the police-SULFA nexus. It was also learnt in Smti Ruma Brahma's case that Shri Rinku Chaudhury of Dudhnoi had an Ambassador car, and the SULFAs of Dudhnoi camp used a Maruti van. In this case there was some discrepancy as to whether the second vehicle was a van or a Gypsy. While the first information mentioned of Gypsy, Bhagirath and Nirmal mentioned van. From the facts of the Goalpara cases it appears that the killers need not necessarily be of the place or police station of the crime. The white Ambassador, the white Maruti Gypsy and the White Maruti van have been more or less common vehicles; and those have always been numberless or "A.F."s. (Applied for).

This case was one of its kind in Goalpara district and the contours of criminality are now prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Goalpara area itself. An almost permanent SULFA camp at Goalpara Town accommodated a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices. Dhaneswar and Sushila Rabhas ULFA son known as Dristi Rajkhowa is an important one to be considered in so far as ULFAciders are concerned. That may put the ULFAciders in a suspicious corner, and concomitant suspicion against those who were at their command and arrangement..

On the basis of the above evidence, the killers' identity is restricted to Binal Rabha and his SULFA associates as perpetrators as an instrument of State policy, in unholy nexus with the Police of Rangjuli. Their accomplices are all those who executed the policy of 'Ulfocide', that is, deliberate killing of ULFAs, the members of their families and relatives, aided, abetted, assisted, or facilitated the killings, namely, the involved Govt department and Rangjuli police administration.

(C) Whether there was conspiracy in killing of Dhaneswar & Sushila Rabha and the motive behind the killings.

This term is replied in two parts, namely, conspiracy in targeting, and motive behind the killing..

I. Conspiracy in targeting the victim. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:-

"when two or more persons agree to do or cause to be done :-

'(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of the earlier report; the same is referred to...The question whether there was any conspiracy or not in the killing of Shri Dhaneswar Rabha and his wife Smti Sushila Rabha has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. It is in evidence that Shri Dhaneswar Rabha and Smti Sushilai Rabha were requested by various agencies to persuade their son Manoj Rabha @ Dristi Rajkhowa who has been in the ULFA, and they were forewarned by the army, and police that if Manoj Raabha could not be persuaded, by them, to join the peace talks and bring peace, the consequences would not be good for the family, and several persons participated in the act of actual killing on the fateful night, there can be no other answer than that there was criminal conspiracy in the killing of Dhaneswar and Sushila Rabha may, therefore, be indicative of the forwarners having been a part of the conspiracy.

The then Chief Minister himself admitted to have caused appeals to be published by social organit social and literary organisations appealing to ULFAs to give up violence and come to the peace process and the same was done by State agencies throughout the State, and some were also forwarned that

consequences of failure would not be good for them. Therefore, there was no denial of this having been a State policy to be executed by the police, and tactically through some SULFAs. This means that the SULFA emerged as an extra-constitutional authority, like the political police force maintained secretly by some dictatorships. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Dhaneswar and Sushila there were definitely more than two persons in the act of shooting them down, but there was also a course of conduct involving the deciders of the course of action culminating in the killings. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killings show that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, there no clue found and the F.R. hastily submitted. It is accordingly held that there was conspiracy in the killings in this case...

II. Motive Behind Killings.. The Motive behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of Dhaneswar and Sushila's son Manoj Rabha @ Dristi Rajkhowa having been in the ULFA, and hence it is an ULFA related case and the motive behind the killing is explainable as perpetuation of A.G.P. rule by getting rid of the ULFAs, their family members and their relatives, by elimination and denoralisation. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in deposition of the then Chief Minister Mahanta in another case. There is evidence of the Army men 1919 cemen and others having visited the family house and first advising to recall Naborj from ULFA and later forewarning that the consequences of the failure to do so would be serious. A course of conduct by different agencies towards similar persuasion and the forewarning that in case of failure to effect surrender consequences would not be good for the family, and thereafter finally culminating in their killing support such a conclusion. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring them back to peace talks, and why relatives who failed to do so should be secretly killed? The manner in, the weapons with, which the victims have been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remote-orchestrated. Those in helm of those departments must be held liable and must be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt.

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

While answering the terms of reference in this case, we also find the following common characteristics of the first group of seven cases also in this case so as to justify a finding of "Ulfocide, that is, deliberate killing of ULFAs, and their families and relatives, on their basis, namely:

1. That these killings involved an ULFA family, namely, that of ULFA-Manoj Rabha @ Dristi Rajkhowa, and the investigations fizzling out and ending in Final Reports (F.R) ..

2. That the killings, were committed at dead of night, and the assailants were spoken to in Assamese by the victims indicating that they were known to them..

3.. That the assailants were armed with sophisticated firearms, as the injuries inflicted on Shri Dhaneswar and Sushila Rabha would suggest..

4. That the weapons used in killing were firearms of different bores and calibers, mostly of prohibited bores normally found in police-military situations.

5. That as firearms of prohibited bores were mostly used; forensic/ballistic examination of exhibits were avoided, and investigation allowed to fizzle out..

6. That the vehicles used were neither detected, nor seized by the police...

7. That there were no police patrolling in the crime area during the killing time.s..

8. That the army was ubiquitous. By army we mean the armed forces of the Union deployed in Assam in aid of civil power. There was lurking evidence of Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners, the *modus operandii* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send an advance team to survey the location and structure of the house, then to send armed and masked men to the family house at dead of night, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere..The same was the *modus operandii* in this case.

9. That there was general resentment and decay against the Unified Command Structure/ Chief Minister.

10. That there has been connivance of SULFAs; and in this killing case no SULFA has been interrogated or made accused or arrested.

11. That the investigation did not commensurate with the seriousness of the crime perpetrated.

12. That modern methods of investigation, finger/foot prints, dog-squads were never used.

13. That no condolence message was sent from the then Govt. of Assam to the victim family.

14. That no ex-gratia/compensatory payment was made by the Govt. of Assam in this case.

15. That in this case, there is remote-orchestrated Ulfocide, death penalty having been imposed on the victims for "status offences," of being the parents of ULFA Shri Manoj Rabha..

16. From this case "remote- orchestration" from Home Ministry is deducible beyond reasonable doubt..

These common characteristics prove remote-orchestration from the apex source of conspiracy committing "Ulfocide" through its instrumentalities including unholy police-SULFA nexus using some of the latter as striking arms or executioners..

The pinpointing responsibility on individuals has to be in conformity with the identity determined in term "B" The indirect responsibility will include all Govt. agency or instrumentality assisting, abetting, facilitating and carrying out the ulfocide in Manoj Rabha @ Deisti Rajkhowa's family.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire. first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed in restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy..Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the long term measures may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The

Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" Sukracharya's *Dandaniti* is based on *danda*, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by appropriate measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society, provided they are capable of doing so. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Those who have committed crimes will surely be brought to justice. As regards the others, let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared

insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable in criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall be held liable and be subjected to proper punishments. So far as political level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But regarding others, even here, except in criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favours in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. In this case both the parents have been killed leaving the orphaned children to fend themselves. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the orphaned children of the victim family, for the benefit of the children of Shri Dhaneswar Rabha and Smti Sushila, Rabha a sum of Rs 10,00,000 (Rupees ten lakhs) only forthwith. More than seven years have already elapsed, and it brooks no farther delay.

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(12)

SHRI MAHENDRA RAI KILLING CASE

Rangjuli P.S. Case No. 41/99

Date of occurrence. 15.9.99

By this Commission's order dated 5.4.2006, by virtue of the authority conferred on it by the Government of Assam's Notification. No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Qssam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

"(a) Circumstances, in each case, leading to the killing of Shri Mahendra Rai

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victim(s) and the motive behind such killing(s).

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing(s)

(e) To make recommendations to prevent recurrence of such killings

(f) Any other matter related to or relevant to the purpose of this inquiry;"

(A) Circumstances leading to the killing of Shri Mahendra Rai.

On 16.9.99 an FIR was lodged by Smti Binapani Ray at about 5.45 P.M. at the Rangjuli P.S. and was received by Shri Hari Mohan Sinha, O.C. Vide G.D. entry No. 369 of Rangjuli P.S. The investigation was entrusted to the I/O Shri P. Borah S.I. The FIR stated that her (Binapani's) elder son Shri Mahendra Rai and one Munin Das, a carpenter, went together on 15.9.99 at about 10 A.M. and, as Munin Das reported, her son Mahendra Rai boarded a Maruti car in front of Rangjuli Hospital, and somehow he has not returned home since then.

As P.W. 2 Smti Binapani Rai deposed that her son Mahendra Rai was a contractor. In September 1999 he did a contract work in Buraburi Railway station in Goalpara district. On 15.9.99, Wednesday, he took his meal at about 9.30 A.M. and went out as usual in connection with contract work. He used to return home every evening at 7 P.M. but that day he did not, and had not returned since. On 16.9.99 an FIR was lodged at the Rangjuli P.S. but she did not know who got her signature on it and who wrote it, because of her distressed mental condition. She said that Mahendra Rai did contract work jointly with one Soneswar Rabha of neighbouring Nagbari village, who had a truck. Asked about the circumstances of missing Mahendra Rai, she said that Mahendra Rai went out of his house with a carpenter and at Rangjuli Bazaar, Mahendra asked Sunil to attend to his own work while he boarded a white Maruti Van and proceeded to Dudhnoi whereafter he was seen no more. On being asked Sunil repeated the story; and on 18th near the road bridge of Dumuni some villagers traced blood marks and found the dead body which they themselves took to the Civil Hospital, Goalpara for post-mortem examination. After finding the dead body on 18.9.99 Shri P. Bora, S.I. as I.O. of the case applied to the C.J.M, Goalpara to the effect that Mahendra Rai's dead body was found concealed at a place within the Mornoi P.S. area and prayed that the sections 302 and 291 IPC be added to section 365 I.P.C. which was already there.

P.W.1. Dr Rahmat Ali Ahmed, Senior Medical Officer, Goalpara Civil Hospital, Goalpara, conducted the post-mortem examination on the dead body of Mahendra Rai on 18.9.99 and found two injuries, namely, 1. One entry wound on the right side of the head and one exit wound on the left side of the head. 2. One 3 1/2 cm diameter exit wound on the interior abdominal wall, just below the left hypochondrium at the mid line. One 2 cm diameter entry wound is noted on the right side of the head 1 1/2" above the right ear; One exit wound is noted on the left side of the head (3 1/2 cm diameter) through which semi-liquid brain material is coming out. The whole skull fractured in multiple fragments.

The whole brain damaged and maximum position was lost. All findings are antemortem in nature. Rigor mortis was present. It may be presumed that death occurred at least 36 hrs before post-mortem examination. From the nature of injuries, the doctor opined, that big type of firearms were used.. :

(B) The identity of the killers and their accomplices, if any.

The killing of Mahendra Rai was secret as to the identity of the killers and their accomplices, and also as to time and manner of killing. It is a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

Mrs. Binapani Rai also said that she had two sons and two daughters, the eldest, a daughter, was married, next was son Mahendra, the third was a daughter still unmarried and the last was her son Mantu, aged 26 years, who joined the ULFA in 1999; that policemen used to visit their house enquiring whereabouts of Mantu and asked them to persuade him to surrender, the Armymen used to visit their house most frequently and advised similarly and said that failure to make Mantu surrender would not be good. She said that the CRPF also used to come and ask them to make Mantu surrender, and they threatened that for failure to do so they shall have to face the consequences. She said that the members of the family made it clear to all of them that they were unable to do so as they had no contact with Mantu. Binapani also disclosed that there were three other ULFAs in their village, namely, Swapan Rai, Akhim Rabha and Rahul Rabha, all joining after Mantu joined. Out of them, Akhim and Rahul had surrendered whereafter Akhim stayed at home as his elder brother was having a pharmacy at Rangjuli, but Rahul seldom stayed at home. Binapani further disclosed that prior to the killing, as far back as in July a group of 5 boys wearing half pants and covering their faces in black cloths, arms in hand, came at night and knocked at their door, though initially afraid, she opened the door and then entering the house they wanted Mohan, who was then at Guwahati, they searched the house and went away. Hearing it almost all the villagers came and saw. She being alone, her husband being away in service, she did not know what to do and lived in fear of being killed since then, as her son was in ULFA, but did not know how to inform police. Asked who, she thought, were the killers of her son Mahendra, she replied: "These could be SULFAs and with them there could be police, the Army and some Govt. agency."

P.W. 3 Shri Ganesh Ch. Rai, a retired Armyman, aged about 62 years, father of the victim Mahendra Rai, deposed that when his son Mahendra Rai left his home on 15.9.99, he was at Sonapur Army camp in its supply department, his son Mahendra never visited Sonapur; and he (Ganesh Rai) somehow had the apprehension that as his son was in the ULFA, and as in other cases, some member of our family would also be killed. Accordingly he requested Shri Bora to keep an eye on his family. When his wife fell seriously ill, he came home.. He said that he was informed by his family that army men used to visit his family but never misbehaved as he was in the army. He said that both the army and CRPF people requested the members of the family to persuade his ULFA son Montu to come back and join the peace talks, failing which the consequences would not be good for the family. He was also present when in the month of July some 5 or more armed boys wearing half pants, and covering their faces with black cloths entered and ransacked his house. The boys first tried to speak in Hindi, but soon thereafter spoke in Assamese. Though they said that they were from the army, from his army experience, he did not believe them to be so. Describing the incident he said that the armed and masked boys first knocked at the door and when it was not opened some said *khura durja khuli diyak*. Being so addressed, he peeped through the wall hole and saw that the boys were having in their hands rifles of

the same series, perhaps so addressed he thought it better to open the door. No sooner than the door was opened, two of the boys in ready position with A.K. 47 rifles in hand, asked why he allowed his son Mantu to go and join the ULFA, he being a knowledgeable person. While the two were so talking the others searched every nook and corner of the house and while going out asked him to meet Mantu at Dudhnoi, but as Mantu was not at home he could not be sent. Asked about his impression about the boys Ganesh Rai said the boys were surely Assamese, but he could not identify any one individually. After the boys left he went out to see how they came and saw that they parked their vehicle behind a truck so as to make it out of sight from their house..

Shri Deepak Kumar, I.P.S., the then S.P. Goalpara district, Goalpara, in his affidavit dated 13.9.2006, para 2, said that while he was S.P. Goalpara, he was informed about the incident of Rangjuli P.S. Case No. 14/1999 wherein 1(one) person was killed, namely, Mohan Rai, an resident of village Sardarpara under P.O. and P.S. Rangjuli in the district of Goalpara, Assam. In para 3 of the affidavit he said that "on receiving the information, taken all necessary steps about the incident." In cross he said that the Unified Command Structure was there in his district, but Army was not located within his jurisdiction, though they frequently used to visit the area. There were around 50 Sulfas in Goalpara district during his time. He "must have visited" the place of occurrence and the house of the victim Mahendra Rai, but he did not inquire whether any member of his family was in ULFA; and he did not ask his subordinate officers also to inquire it, but said that he took this S.R. case seriously. Answering a question that while examined u/s. 161 cr. P.C. one Hitesh Patgiri clearly said that one Mantu Rai, brother of victim Mahendra Rai was in the ULFA, and yet the case was not investigated in that line, the S.P. replied that "The case was investigated to nab the culprits". The following question was answered: "Q. It is in evidence that the ULFA, the CRPF and the police visited the house of Mahendra Rai several times and they also asked the members of the family to persuade their member Mantu Rai to give up violence and come back to the main stream, and despite that the case was not taken up and that the CRPF had threatened them with dire consequences, and the investigation did not take note of all these elements of evidence and rather hastened to submit the F.R. after barely six months of the date of the incident ?

A. It was the duty of the Army, the CRPF, the police to visit the house of ULFA members and persuade them to surrender so it is not a question to be investigated in the case.

Q. The investigation did not follow the line of the events and did not pursue the enquiry as to whether the killing was the handiwork of some SULFAs?

A. The I.O. will be the appropriate officer to answer this question".

The S.P. Mr. Kumar said that he was "not aware that a Final Report had been submitted on 31.3.2000 (date of occurrence 15.9.99), because it was the Addl. S.P. Headquarters who approves the Final Report)" He said that "the practice was for the Circle Inspector to write the Progress Report (PR) on the basis of which he could suggest for F.R. for approval to the Addl S.P. Head quarters and on its approval it goes to the Court"

The above practice may or may not absolve the S.P. for early and improper submission of F.R. in an intricate secret killing case involving a centrally orchestrated murder of an ULFA family. More so, when in all such cases in the district F.R.s have been submitted, more or less prematurely..

Replying to a question as to whether in the meetings organized by the then Chief and Home Minister Shri Prafulla Kumar Mahanta the cases of secret killings involving members of ULFA families were discussed, Mr. Kumar replied that he attended all the conferences of the D.C.s and S.P.s in which the then Chief Minister Prafulla Kumar Mahanta addressed. He did not know at what level those conferences were organized during his tenure as S.P. in Goalpara district, but at the moment he did not remember the minutes of the meetings.

The question was what were the differences and agreements between the meetings of the Unified Command Structure at the State level and the District Co-ordination Committee level and those

organized for D.C.s and S.P.s and attended by the Chief Minister. The answer of the S.P. was that having not known the function of the Strategic Group, he could not compare the agendas of the two at the State level, but at the District Co-ordination Committee level and those organized for the D.C.s and S.P.s and attended by the Chief Minister, the former presided over by the D.C., took stock of the law and order situation of the district, there was intelligence sharing and mutual logistic support between different attending groups. "D.C.s and S.P.s meetings addressed by the Chief Minister review the current law and order situation in the district. There could be general discussion. There is no specific discussion casewise."

During his tenure there was no ULFA-SULFA conflict in Goalpara, and no idea of any possibility of the SULFA having been involved in this case came to his mind. They always used to monitor the activities of the SULFAs. There was no record of any SULFA coming from Guwahati and committing crime in Goalpara. Rusevelt Rabha, Hitler Rabha, Purandar Rabha and Bimal Rabha, all Sulfas were not examined in this case and he could not say whether information was collected as to where were they on the fateful night of 15.9.99, though they were called to office for the purpose of their rehabilitation allotting 100 bighas oagricultural land for the purpose. The S.P. did not form any opinion as to who could possibly be the culprits.

The I.O. examined the following persons under section 161 of the Cr.P.C. 1. Shri Hitesh Patgiri, aged about 45 years, a contractor in PWD, who was a co-villager of Mahendra Rai. On the next day, He said that he searched for Mahendra Rai in Dudhnoi and Mornoi area. It is in evidence in another case that there was a small SULFA camp under Dudhnoi Police station area. He did not know whether Mahendra was in ULFA or not, but his brother Mantu was not at home for last one year. Mahendra had no enmity with any one, but he believed that he was kidnapped by inknown miscreants. Rajiv Choudhury, son of Shri Bolin Choudhury of Rangjuli, aged about 25 years, working at his own pharmacy at Rangjuli Bazaar said that on the previous day he did not see Mahendra Rai, but heard from others that he had been kidnapped. From his pharmacy the Rangjuli hospital would be 5/6 meters only. Shri Aswini Kumar Sinha, son of Shri Sarat Ch. Sinha of Village Rangjuli, aged about 45 years, 4th grade employee of Rangjuli hospital said that at 10 A.M. on 16.9.99 he saw Mahendra Rai talking with Rinku Rai on the PWD road. A white Maruti van was parked near them, but he did not see its number. After 2 to 3 minutes talk the boys boarded the Maruti van facing Guwahati side, then took a turn and proceeded towards Darangiri. He did not know the boy with whom Mahendra was talking, and that Mahendra had no enmity with anyone. Sunil Das, Carpenter, aged about 23 years said that he was fixing wooden doors and windows to the house of Rinku Rai and so he knew Mahendra and was to meet Mantu Rabha but did not find him in his house and so he came to Rangjuli P.W. 3 Shri Ganesh Ch. Rai, a retired army person, aged about 62 years, father of the victim Mahendra Rai, deposed that when his son Mahendra Rai left his home on 15.9.99, he was at Sonapur Army camp in its supply department, his son Mahendra never visited Sonapur; and he (Ganesh Rai) somehow had the apprehension that as his son was in the ULFA, and as in other cases, some member of our family would also be killed. Accordingly he requested Shri Bora to keep an eye on his family. When his wife fell seriously ill, he came home. He said that he was informed by his family that army men used to visit his family but never misbehaved as he was in the army. He said that both the army and CRPF people requested the members of the family to persuade his ULFA son Montu to come back and join the peace talks, failing which the consequences would not be good for the family. He was also present when in the month of July some 5 or more armed boys wearing half pants, and covering their faces with black cloths entered and ransacked his house. The boys first tried to speak in Hindi, but soon thereafter spoke in Assamese. Though they said that they were from the army, from his army experience, he did not believe them to be so.

Describing the incident he said that the armed and masked boys first knocked at the door and when it was not opened some said khura darja khuli diyak. Being so addressed, he peeped through the wall

hole and saw that the boys were having in their hands rifles of the same series, perhaps so addressed he thought it better to open the door. No sooner than the door was opened, two of the boys in ready position with A.K. 47 rifles in hand, asked why he allowed his son Mantu to go and join the ULFA, he being a knowledgeable person. While the two were so talking the others searched every nook and corner of the house and while going out asked him to meet Mantu at Dudhnoi, but as Mantu was not at home he could not be sent. Asked about his impression about the boys Ganesh Rai said the boys were surely Assamese, but he could not identify any one individually. After the boys left he went out to see how they came and saw that they parked their vehicle behind a truck so as to make it out of sight from their house..

Shri Deepak Kumar, I.P.S., the then S.P. Goalpara district, Goalpara, in his affidavit dated 13.9.2006, para 2, said that while he was S.P. Goalpara, he was informed about the incident of Rangjuli P.S. Case No. 14/1999 wherein 1(one) person was killed, namely, Mohan Rai, a resident of village Sardarpara under P.O. and P.S. Rangjuli in the district of Goalpara, Assam. In para 3 of the affidavit he said that "on receiving the information, taken all necessary steps about the incident." In cross he said that the Unified Command Structure was there in his district, but Army was not located within his jurisdiction, though they frequently used to visit the area. There were around 50 Sulfas in Goalpara district during his time. He "must have visited" the place of occurrence and the house of the victim Mahendra Rai, but he did not inquire whether any member of his family was in ULFA; and he did not ask his subordinate officers also to inquire it, but said that he took this S.R. case seriously. Answering a question that while examined u/s. 161 cr. P.c. one Hitesh Patgiri clearly said that one Mantu Rai, brother of victim Mahendra Rai was in the ULFA, and yet the case was not investigated in that line, the S.P. replied that "The case was investigated to nab the culprits. The following question was answered: "Q. It is in evidence that the ULFA, the CRPF and the police visited the house of Mahendra Rai several times and they also asked the members of the family to persuade their member Mantu Rai to give up violence and come back to the main stream, and despite that the case was not taken up and that the CRPF had threatened them with dire consequences, and the investigation did not take note of all these elements of evidence and rather hastened to submit the F.R. after barely six months of the date of the incident ?

A. It was the duty of the Army, the CRPF, the police to visit the house of ULFA members and persuade them to surrender so it is not a question to be investigated in the case.

Q. The investigation did not follow the line of the events and did not pursue the enquiry as to whether the killing was the handiwork of some SULFAs

A. The I.O. will be the appropriate officer to answer this question".

The S.P. Mr. Kumar said that he was "not aware that a Final Report had been submitted on 31.3.2000 (date of occurrence 15.9.99), because it was the Addl. S.P. (Headquarters) who approves the Final Report." He said that "the practice was for the Circle Inspector to write the Progress Report (PR) on the basis of which he could suggest for F.R. for approval to the Addl S.P. Headquarters and on its approval it goes to the Court"

The above practice may or may not absolve the S.P. for improprio early submission of F.R. in an intricate secret killing case involving a centrally orchestrated murder of an ULFA family. More so, when in all such cases in the District F.R.s have been submitted, more or less prematurely. Replying to a question as to whether in the meetings organized by the then Chief and Home Minister Shri Prafulla Kumar Mahanta the cases of secret killings involving members of ULFA families were discussed, Mr. Kumar replied that he attended all the conferences of the D.C.s and S.P.s in which the then Chief Minister Prafulla Kumar Mahanta addressed. He did not know at what level those conferences were organized during his tenure as S.P. in Goalpara district, but at the moment he did not remember the minutes of the meetings.

The question was what were the differences and agreements between the meetings of the Unified Command Structure at the State level and the District Co-ordination Committee level, and those organized for D.C.s and S.P.s and attended by the Chief Minister? The answer of the S.P. was that having not known the function of the Strategic Group, he could not compare the agendas of the two at the State level, but at the District Co-ordination Committee level and those organized for the D.C.s and S.P.s and attended by the Chief Minister, the former presided over by the D.C., took stock of the law and order situation of the district, there was intelligence sharing and mutual logistic support between different attending groups. "D.C.s and S.P.s meetings addressed by the Chief Minister review the current law and order situation in the district. There could be general discussion. There is no specific discussion case-wise."

During his tenure there was no ULFA-SULFA conflict in Goalpara, no idea of any possibility of the SULFA having been involved in this case came to his mind. They always used to monitor the activities of the SULFAs. There was no record of any SULFA coming from Guwahati and committing crime in Goalpara. Roosevelt Rabha, Hitler Rabha, Purandar Rabha and Bimal Rabha, all SULFAs were not examined in this case and he could not say whether information was collected as to where they were on the fateful night of 15.9.99, though they were called to office for the purpose of their rehabilitation allotting 100 bighas of agricultural land for the purpose. The S.P. did not form any opinion as to who could possibly be the culprits. It has been learnt from evidence in another case that Shri Roosevelt Rabha and his brother-in-law Shri Rinku Choudhury were from Dudhnoi, and that Dudhnoi SULFAs used a white Maruti van at that time.

This case was the first of its kind in Goalpara district and the contours of criminality are not prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Dhoopdhara area itself. An almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Roosevelt Rabha, and at Krisnai outpost. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi SULFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

Considering the above Shri Bimal Rabha's Cycle-repairing shop was at about 6 kms from Dudhnoi, evidence on record, the modus operandi of the case, the fact that the inmates of the Maruti van with whom Mahendra Rai talked behind the white Maruti van, which was associated with the SULFAs there, for some time, and the fact that the SULFA boys were in the Police Station, though said to have been for rehabilitation purposes, and the fact that earlier also 5/6 half pant wearing, masked and armed boys came to the house of Mahendra Rai, searched for Mantu and expressed resentment for allowing him to go to ULFA, speaking first in Hindi and later in Assamese, it is reasonable to limit the identity of the killers to concerned Dudhnoi and Goalpara identify the SULFAs Shri Roosevelt Rabha, Shri Hitler Rabha, Shri Purandar Rabha, Bimal Rabha and Shri Rinku Rai as the perpetrators. All the Govt. agencies that aided, abetted, assisted or facilitated the commission of the crime will be the accomplices thereof.

The F.R. submitted by I/O. Hari Mohan Sinha S.I. Srikrishna outpost and sent to Goalpara P.S. on 2.1.99 F.R. No. 45 dated 27.5.2000, accepted by Magistrate but there is no copy in case record. This case deserves re-investigation in the interest of justice. The case records to be sent back for the purpose..

(C) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

1. Conspiracy in targeting the victim. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy which is defined in Section 126A of IPC as follows:-

"When two or more persons agree to do or cause to be done :-

'(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of the earlier report; the same is referred to... The question whether there was any conspiracy or not in the killing of Mahendra Rai has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. It is in evidence that the parents of Mahendra Rai were requested by various Govt. agencies to persuade their son Mantu to give up and come back and surrender and were forewarned by the army and police that if they could not be so persuaded to surrender, the consequences would not be good for the family. Earlier also some unknown half pant wearing masked and armed boys came to their house looking for Mohan and asked why Mantu was allowed to go to ULFA and enquired of his whereabouts, most probably to kill him. This must be treated as part of the conspiracy. The then Chief Minister, who has, of course denied it before the Commission, but he revealed that he requested the literary organizations to persuade the ULFAS to surrender and come to the main stream. Someone or more from those were likely to try to persuade Mahendra's parents to the same effect. There is evidence to show that the SULFA camp was in touch with the police. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Mahendra Rai there were more than two persons in the act of taking away and shooting. There was also a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing show that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, there was conspiracy in this case..

II. Motive Behind Killing.. The Motive. behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of Mahendra Rai's younger brother Mantu Rai having been an ULFA and hence it is an ULFA related case, and the motive behind the killing is explainable as perpetuation of A.G.P. rule by getting rid of the ULFAs, their family members, and their relatives, by elimination and denoralisation.

There is evidence of the Armymen, policemen and others having visited the family house and first advising to recall Mantu from ULFA and later forewarning that the consequences of the failure to do so would be serious, A course of conduct by different agencies towards similar persuatuin and the forewarning and thereafter sending half pant wearing armed and masked persons in search of Mahen, and finally culminating in Mahen Rai's killing support such a conclusion. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring them back to peace talks, and why relatives who failed to do so should be secretly killed? The manner in, the weapons with, which the victims have been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing, The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remote- orchestrated. Those in helm of those departments must be held liable and must be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the killing, and without which he would not have done it.

(D) Pinpointing responsibility on persons who were involved directly or indirectly in the commission of such killings

This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately, the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

The common characteristics of the first group of seven cases.. While answering the terms of reference in **each case**, we also find the following common characteristics among the cases in this second group, so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs, and their families and relatives on their basis, namely::

1. That this killing involved an ULFA family; and investigations fizzling out, ending in Final Report.
2. That the taking away of Mahendra Rai was in the evening, but the killing was secret..
- 3.. That the assailants appeared to be friendly and the killing was treacherous and cery cruel...

4. That the weapons used in killing were invariably firearms of different sizes, bores and calibers, mostly of prohibited bores normally found in police-military situations
5. That as firearms of prohibited bores were used; forensic/ballistic examination of exhibits were avoided and investigation ultimately fizzling out.
6. That the vehicles used were mostly Maruti Gypsies & vans, and always without Registration numbers..
7. That there were no police patrolling in the crime areas.
8. That the army was ubiquitous. By army we mean the armed forces of the Union deployed in Assam in aid of civil power. There was lurking evidence of Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send an advance team to survey the location and structure of the house, then to send armed and masked men to the family house at dead of night, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere..
9. That there was general resentment and outcry against the Unified Command Structure/ Chief Minister.
10. That there has been connivance of SULFAs; and in no killing case any SULFA has been made accused or arrested.
11. That the investigation did not commensurate with the seriousness of the crime perpetrated.
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. That no condolence message was sent from the then Govt. of Assam to any of the victim families.
14. That no ex-gratia/compensatory payment was made by the then Govt. of Assam in the case.
15. That this case, there is remote- orchestrated Ulfocide, death penalty having been imposed on the victims for "status offences," of being members of an ULFA families.

16. From this case "remote- orchestration" is deducible.

These common characteristics prove remote orchestration from an apex source of conspiracy committing Ulfocide through its instrumentalities including concerned SULFAs as executioners.

The pinpointing of responsibility on persons directly or indirectly involved has to be made consistently with the identity determined in term "B" The person indirectly responsible will be the accomplices to the crime. One important point is the use of the white Maruti van which has by then been associated with the Dudhnoi camp SULFAs Dudhnoi appeared to have provided the gallows for several persons picked up from places outside Dudhnoi area.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure. which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt., signed by His Excellency the Governor of Assam, regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of

the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I: "INTRODUCTORY." of the earlier report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State. The armed forces and other forces of the Union were deployed to cope with the internal disturbance though it to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquillity, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State. Under Article 355 of the Constitution of India it is the duty of the Union of India to protect against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. There is no problem of external aggression in Assam, the only problem being that of internal disturbance. If that is solved and normalcy is restored, the State will be in a position to carry on in accordance with the provisions of the Constitution of India.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the

constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society provided he is capable of doing so if called upon. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the insolvency principle is not applicable in criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities also shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there

be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to be its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the parents of the victim, Shri Ganesh Chandra Rai and his wife, for the benefit of the family, a sum of Rs 5,00,000 (Rupees five lakhs) only forthwith. More than seven years have already elapsed, and it brooks no farther delay.

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(13)

SHRI SWAPAN PATGIRI KILLING CASE

Goalpara P.S. Case No. 79/99

(Date of occurrence 11.5.99)

By this Commission's order dated 23.8.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No. PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No. No. PLA. 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

"(a) Circumstances, in each case, leading to the killing of its victim.

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killing..

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killings

(e)To make recommendations to prevent recurrence of such killings

(f) Any other matter related to or relevant to the purpose of this inquiry;"

“(A) Circumstances leading to the killing of Shri Swapan Patgiri

On 12.8.99 at 10.30.A.M.Shri Siddhi Nath Patgiri, son of Shri Hara Kanta Patgiri of New Goalpara to the effect that the previous evening (11.5.99) at about 7.P.M. his nephew Shri Swapan Kumar Patgiri, while he was marketing in the Baladmari Durgamandir market, some unknown armed miscreants coming by Maruti car, forcibly took him into it and fled away. Till then he even after various enquiries did not find any trace of his nephew. Accordingly he prayed for necessary action..

Srimati Renu Patgiri aged about 50 years, w/o Late Deben Patgiri and mother of Swapan @ Sapon Patgiri, of Baladmari village in her affidavit dated 10.10.06 states that on 11.5.99 Tuesday evening, at about 7.30 P.M, while Swapan was marketing in the Durgamandir market, some unknown armed miscreants coming by a Maruti van forcibly taking him into the van, fled away. Getting the information her brother-in-law (Husband's younger brother) immediately proceeded to the place of occurrence and failing to find out the boy even after lot of inquiries, lodged an F.I.R, at the Goalpara Police station whereupon the Goalpara P.S Case No. 79/99 (G.R. No.318/99) was registered and investigated. On 12.5.99 the dead body of Swapan Patgiri was found under a culvert of Salmora Gaon under Dudhnoi Police Station area by the police and got the inquest performed as per their G.D. entry No. 340 dated 12.5.99

P.W. 3 Dr Nabasree Mudoj conducted the post- mortem examination on the swollen dead body of Swapan Patgiri, aged 28 years; rigor mortis absent; and found the following antemortem injuries: 1.Deep cut injury on left side of neck , blood oozing from the wound , size 3"x3", left Jugular vein and left carotic artery cut. 2. Penetrating injury from right side of the temporal region to left side of temporal region ½"x1" side of left temporal region. 3. Hole under cranium under- wall, size ½" diameter, brain membranes lacerated.. Lacerated injury of brain present.. Cause of death was shock and haemorrhage caused by bullet injuries on scalp and the deep cut on left side of the neck. Post-mortem report was prepared and deposited in office the same day on 15.5.99 Death was caused by shock and haemorrhage due to the bullet and cut injuries stated in report. : .

(B) The identity of the killers and their accomplices, if any.

Accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, divides the accomplices (parties to a crime) into perpetrators and accessories. An accessory is one who excites or ps the commission of an offence by the perpetrator. Perpetrator means exclusively the person who in law performs the offence. More precisely, the perpetrator is the person who. Being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, while accessories exclude, the accomplices include the perpetrators. However, often they are used as synonymous. The identity of the killers and their accomplices, if any, has to be based in evidence on record.

Smti Renu Patgiri, widow of Late Deben Patgiri and mother of the victim Swapan @ Sapon Patgiri in her affidavit dated 10.10.2006 stated that on 11.5.99. Tuesday, at about 7.30 P.M when her son Swapan @ Sapon Patgiri was marketing at the Baladmari Durga Mandir market, some unknown miscreants, armed with deadly weapons, coming by a white Maruti van, forcibly took him into the van and fled away..My brother-in-law (husband's younger brother) getting the information and immediately proceeded to the place of occurrence in Baladmari market, and finding no trace lodged the F.I.R. at the Goalpara Police station whereupon the Goalpara P.S.case No. 79/99 (G.R. case No. 318/99) was registered and investigated. On 12.5.99 the dead body of Swapan Patgiri was found under a culvert on the No.37 National Highway under the Dudhnoi P.S. by Dudhnoi police who registering G.D. entry

No.380 of 12.5.98 brought out and conducted inquest over it. Under the circumstances on application Section 329 I.P.C. r/w S.25(1)(A) 27 Arms Act were added in the Goalpara P.S. case No.79/99.u/s. 356 I.P.C. Witness referred to a news item in Assamese daily "Pratidin" issue of 11.11.2003 captioned saying that the politics of secret killing was at the top.

In para 8 of the affidavit it was said that failing to nab anyone the police submitted F.R. (Final report) on 31.3.2000. In para 9 of the affidavit it was said that 4 Nos of security police were on duty near the place of kidnapping at Baladmari bazar and they even talked with the assailants; and could know the names of the culprits. It was also said that there were two boys of Bapujinagar among the culprits. It was also stated that within 3 / 4 minutes of kidnapping Shri Upen Boram C.I. and Shri Nitya Ranjan Mahanta arrived at the spot and were told by the people present that they would be able to rescue the boy if they pursued the vehicle, but surprisingly, instead of doing so, they dispersed the gathering by their lathis. This left no doubt that the police were in league with the kidnappers/killers. It was also stated that the then S.P. Deepak Kumar was also telephonically informed several times, and instead of taking steps he retorted Shri Siddhi Nath Patgiri, Advocate that Patgiri having been the chief of the MASS it was not unlikely that his nephew would be picked up, and that he was not sitting only for this incident. Shri Prakash Ch. Das, Advocate also telephoned to the S.P, without result.

The deponent was told by the employees of "Marami Hotel" located in front of the Goalpara Civil Hospital that from 8 A.M. to 2 P.M. Shri Dhanapati Medhi, Shri Jagannath Sangma, @ Chira, Shri Shri Rusvelt Rabha, Shri Bipul Rabha, Shri Munna Sarma, and Shri Jayanta Rabha, @ Tapa. coming in a Maruti van enquired of Swapan Patgiri thrice in the hotel, and that fortunately at that time Swapan was out of Goalpara Town.

P.W. 2. Shri Siddhi Nath Patgiri deposed that in the 11.5.99 evening, while at home, his nephew Homen Patgiri informed that his brother Swapan Patgiri was lifted from Durga-Mandir Bazar by some unknown miscreants in their white Maruti van; and that hearing it he immediately rushed to Durga Mandir Bazar where the people present told him that at about 7.30 P.M. some unknown miscreants, all armed with A.K. 47 rifles, came and stopped near Swapan and forcibly took him into the Maruti van and fled away; and that they tried to intercept, but when rifles were pointed at them they desisted; and that four armed policemen were also present there and they talked with the inmates of the vehicle on acquainted terms, but when asked they did not divulge anything. Within ¼ minutes of the incident Shri Upen Bora, C.I. and Shri Nitya Ranjan Mahanta O.C. arrived the place place of occurrence where the people surrounded and requested them to pursue the kidnapping vehicle and rescue the boy, but, instead of doing so they lathi-charged the gathering, talked with the four armed policemen on duty and left for the Goalpara P.S soon followed by the four policemen. The people present there told Shri Siddhinath Patgiri that Roosevelt Rabha, Jagannath Sangma, @ Sira, Bipul Rabha, Dhanpati Medhi and Jayanta Rabha @ Tapa were there in the van, but the gathering could not do anything, those being equipped with deadly weapons. Coming back Shri Siddhinath Patgiri telephoned to the S.P. narrating the incident including the names of the inmates of the vehicle, but the S.P. Mr. Deepak Kumar straightway told him that as he (the deponent) was the district Chairman of the MASS, his nephew might have been lifted by those SULFAs. When he telephoned again, after about an hour, the S.P. told him, said to be rather rudely, that he was not sitting there for his(deponent's) business alone. Under the circumstances, the deponent believed the police must have been in league with the SULFAs in the kidnapping, and that is why the Bapuji Nagar SULFA camp was constantly being guarded by Police. In cross-examination the witness said that he knew the names of kidnapper SULFAs but for security reasons did not state them in the FIR; that the SULFAs let loose a reign of terror at Goalpara; that the SULFAs of the camp were almost constant companions of the army, the police and CRPF, often wearing army/policde uniforms that a group of SULFA boy's came to his shop 2/3 times before the incident and enquired about Swapan who then was not in the shop; that one SULFA went to call Swapan from his marketing place and seeing him and the

vehicle he refused to come near the van, sat on the road and entreated to spare his life, but Roosevelt Rabha caught hold of him by the waist and lifted and forcibly put him inside the van that left soon; that his family was informed by O.C. Nitya Ranjan Mahanta on 12.3.99 that Swapan's body was found and someone was to go and identify it, and gave a lift to him to that place. that he tried to lift the dead body but could not due to the deep cut injury on the neck, ; that the police took the dead body to Dudhnoi P.S. on a Maruti Gipsy. that he himself was detained on several occasions; and that he did not go to reply to the F.R. notice being apprehensive of his own security.

From the above evidence there could be no doubt that the Army, the police and the concerned SULFAs were acting hand-in-hand. It amounted to declaring war on the ULFA. The protector turned the destroyer, the protecting force itself eating up the crops it was meant to protect. It, therefore, deserves exemplary punishment.

The modus operandi, including the coming of 4/5 armed youth to Swapan's house in July earlier, and someone coming and enquiring of Swapan earlier in the day, the white Maruti van which has been associated with the SULFAs of Goalpara, and Dudhnoi, the direct naming of them by the patgiris and the evidence of the SULFAs put it beyond reasonable doubt that the abovenamed SULFAs were the perpetrators and all those aided, abetted, assisted or facilitated, will be the accomplices.

N.W. 1. Shri Deepak Kumar S.P. Goalpara denied the statement attributed to him by Shri Siddhinath Patgiri. He said that the concerned officers were directed by him to nab the culprits. He did not remember whether he visited the place of occurrence. He did not remember that four armed policemen were posted there nor did he remember how many people gathered there at the Durgamandir Bazar at the time of kidnapping. He said that the lathi charge incident must have been reported to him. Asked whether the named SULFA boys stayed in Goalpara town, he replied that there was a rehabilitation camp for SULFAs within Goalpara Town and there was an arrangement for their stay and some of them may have stayed there but they were not bound to stay and they were allowed to stay at their homes if they so desired. The camp was set up under the rehabilitation camp of the then Govt. of Assam. SULFAs were paid stipends out of money received from S.B. Headquarters and paid to them at prescribed rates. The camp was in Goalpara town and not within police Reserve. Police guarded the camp and kept watch. The O.C. Goalpara and other officers were briefed to keep watch over them, but no records of their movements kept, and no records of movements were there on 11.5.99 because there was no such allegation against SULFAs staying in the camp. Mr. Kumar did not know Shri Siddhinath Patgiri P.W. 2, and did not know that Shri Patgiri was the District President of MASS and he did not know that family's linkage with ULFA, if any. There were rehabilitation guidelines. SULFAs were given stipends for one year after surrender. He did not know if any SULFA inmate was provided with P.S.O. The P.S.O.s were always to be in uniform and they are provided with carbines and sten guns. SULFA inmates were not provided with vehicles. When he visited the camp there were 113 inmates including 76 RNSF (Rabha National Security Force). Mr. Kumar knew SULFA Roosevelt Rabha, but he did not know whether he was there in the camp, but Roosevelt Rabha was a very old surrenderee. There was security for there was a threat perception and the Addl S.P. was to supervise the camp. He did not remember whether there was any clash between the ULFAs and the SULFAs. Inmate SULFAs were not allowed to carry arms. He was not required to issue any supervisory note, Addl S.P. (HQ) and C.I. supervised the S.R. cases. He knew that there was no clue found in the case, yet the idea of SULFAs being involved in the case did not come to his mind. He stated that "investigation to a case is a collective effort of the Police Department and it may emerge from the case diary what idea was formed in this case." The failure to find any clue was brought to his notice and the case was still pending on the date of his transfer in the year 2000. Mr. Kumar denied the suggestions that the investigation was as desired from higher authorities as an eye wash and that the Police allowed the SULFAs to carry arms and use vehicles and were used in killing ULFAs, their family members and relatives.

N.W.3 Shri Rusvelt Rabha of Dudhnoi, said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed. He said he did not know anything about the incident mentioned in the deposition of Shri Siddhi Nath Patgiri, P.W. 2, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped, He however prayed, in the alternative, that he be allowed to cross-examine Shri Siddhinath Patgiri and he was allowed to do so. He deposed, *inter alia*, that he was falsely implicated; that he was provided with a PSO (Personal Security Officer) in 1998 (with a carbine; that he owned a revolver of .32 bore for which he used to store ammunitions;) He joined ULFA in 1986 of his own, after he passed his High School Leaving Certificate Examination and thereafter admitted into Krisnai College He was ULFA Vice Chairman of Goalpara district, in the political wing, and was provided with an armed body guard. As Vice-Chairman he was functionless. Police wanted him now and then, He surrendered in 1992 of his own, when he was married, along with Shri Pabitra Rabha thereafter he was engaged in timber business and presently owns a weigh-bridge and purchased a moon-beam Maruti in 2001. According to him the Bapujinagar SULFA camp was set up in 1999. He never visited the SULFA camp at Bapujinagar. He was addressed by others as "Dada" because he was not the boss of the SULFAs. He has been living in Goalpara Town only in 2000 his weigh-bridge being at Solmari at National Highway 37. He did not know Swapan Patgiri nor his family. He has come to know of Swapan Patgiri's incident "only now". He knows Shri Jagannath Sangma @ Sira, Shri Bipul Rabha, Shri Dhanapati Medhi, but not Jayants Rabha @ Tapa, as SULFAs. As all of them surrendered before 1999 and the SULFA camp was set up in 1999, they did not live in the SULFA camp then. Once ULFA demanded Rs.5,00,000 (Five lakhs) from him and he reported to police and Police provided him with a PSO. He denied the suggestion that he was involved in the killing of Swapan Patgiri, and that there was unholy nexus between police and SULFA or that he has suppressed the truth from the Commission. He had no occasion to read the paper "Pahekia" issue which published his name as having been involved in this case.

N.W. 4 Shri Dhanapati Medhi said that receiving notice from this Commission he consulted his learned counsel and then submitted an application praying for time and copies of some papers which were shown by office to him, but due to paucity, no time could be allowed. He said he did not know anything about the incident mentioned in the affidavit and deposition of Shri Siddhinath Patgiri P.W. 2, and he prayed that the notice issued to him be withdrawn and the proceeding against him be dropped, He however prayed, in the alternative, that he be allowed to cross-examine Shri Siddhinath Patgiri and he was allowed to do so. He deposed, *inter alia*, that the allegations made against him were false. He was married and has a daughter of three and half years, living in joint family with his parents and brothers, He is permanent resident of Bapujinagar which is included in Baladmari area. He joined ULFA in 1988/89 after passing the High School Leaving Certificate Examination and then completed the Higher secondary examination in Arts in Goalpara College. His ULFA function was to fix posters and banners, as general member and his alias was Rai. He surrendered in 1992, In 1991 he worked in a plywood mill in Meghalaya. He was prosecuted under TADA when he was in ULFA. After surrender he was staying in his Bapujinagar house, He did not know whether a SULFA camp was set up in Bapujinagar, but saw one near it. He did not accept the Govt. loan of Rs 2,00,000. Of the named persons he knew only Rusvelt Rabha, Jagannath Sangma, Munna Sarma and Ratan Das., Jagannath Sangma and Ratan Das belonged to Bapujinagar. After surrender he plied his family truck supplying gravel and stone. He was not threatened by ULFA after his surrender. He learnt about Swapan Patgiri's case after two days of the incident. He said perhaps he was out on the date of the incident in his truck. He learnt it at Chowk discussion. He learnt that Swapan Patgiri was killed, but he did not know Swapan Patgiri. He did not know the distance between his house and that of Swapan Patgiri, nor he heard his name. He did not hear anything about the MASS. He also did not know the aims and objects of the ULFA. He saw people joining ULFA and so he also joined, and because police wanted him now and then, he surrendered. He did not think about the

incident and had no impression about it. He did not know Siddhinath Patgiri, denied that he was involved in the incident, or that there was police ULFA nexus, or that police protected him nor was he giving false evidence as suggested. He denied that the police-Sulfa nexus acted according to State policy in causing the killing through some SULFAs..

Noticee witnesses Shri Rusevelt Rabha and Shri Dhanpati Medhi were allowed to cross-examine Shri Siddhinath Patgiri, uncle of Swapan Patgiri. Accordingly Shri Patgiri was cross-examined on their behalf by Mr. Jayanta Deka at Goalpara on 2.12.2006. First concerning

In cross-examination of Shri Siddhinath Patgiri by Mr. Jayanta Deka, Advocate, on behalf of Shri Rusevelt Rabha and Shri Dhanpati Medhi, the learned counsel devoted mainly on the credentials of Shri Patgiri Counsel asked Shri Patgiri whether he purchased the Bhaluk dubi land of which he mentioned in his answer to Q. No. 18. Shri Patgiri replied that it was a Govt land occupied by his wife and elder sister-in-law (Elder brother's wife) and they were paying to Government Touzi Bahi revenue..and the plot was enclosed by walls; and that it was encroached upon by SULFAs after Swapan Patgiri's incident; and that Swapan Patgiri was connected with the land as he was his (Siddhinath Patgiri's) nephew.. He did not remember when the first Tauzi bahi revenue receipt was obtained. However, the fact of tauzy bahi revenue payment was not challenged. Questioned as to what was the description of the vehicle used by the kidnappers, Shri Patgiri replied that in the FIR he described it as Maruti car, but he corrected himself in his affidavit by describing it as white Maruti van, Shri Patgiri replied that in his FIR he mentioned of unknown assailants lifting Swapan Patgiri, because of security reason. Being asked about the sources of risk, he replied that his predecessor district Chairman of MASS was kidnapped from the road and murdered not long before this incident. Shri Patgiri admitted that in his examination-in-chief he mentioned only 5 names, and said that then he felt secured because the Govt. has changed and the present Govt. appointed this Commission. Shri Patgiri denied the suggestion that he falsely implicated Shri Rusevelt Rabha, Shri Jagannath Sangma @ Sira, Shri Shri Bipul Rabha, Shri Shri Dhanpati Medhi, and Shri Jayanta Rabha @ Tepa, and asserted that those were truly mentioned and not out of grudge as suggested. Questioned as to why he did not mention the names in his statement u/s, 161 Cr.P.C. he replied that because the police themselves were involved, it would be of no use to mention.. He denied the suggestion that he was deposing falsely before the Commission..

Mr. Jayanta Deka was heard after the cross examination was over and his submissions were considered. The facts of kidnapping and killing were not challenged, only who were the assailants was questioned. This has to be decided on the basis of evidence..

N.W. 2. Shri Nitya Ranjan Mahanta T.S.I. Goalpara Sadar P.S. He joined Goalpara Sadar P.S. on 9.5.99 and the incident happened on 11.5.99. On 12.5.99 the FIR was lodged, G.D. Entry made and the case was registered and he was entrusted by CI cum O.C. Shri Upen Bora to investigate the case. He also performed the Miscellaneous case diary items At 7.15 P.M. He arrived at Durga Mandir Bazar and found an assembly of persons and asked them why they were there, and was told that sometime earlier a person was kidnapped therefrom and taken away towards Beltola. He tried to pursue the vehicle; the police patrolling party at Beltola told him that a white numberless Maruti van crossed that point in great speed and did not stop at their whistle. Then he proceeded to S.P.'s bungalow where CI, Shri Upen Bora was already in and S.P. alerted all police stations and outposts to intercept the white numberless Maruti van. Back to Beltola market he picked up staff and proceeded towards Matia and the CI/O.C. proceeded towards Mornoi. Reaching Mornoi he asked the police petrol party about the van, and they replied in the negative, thereafter he proceeded to Matia P.S. there met the C.I. of Dudhnoi circle, and returning therefrom he searched for the white numberless Maruti van in the lanes and bye-lanes of Goalpara Town and found no clue whatsoever. Coming back to Goalpara P.S. he and C.I Upen Bora searched for the vehicle the whole night in vain and no clue found. Then he proceeded to Geetanagar, Natun Goalpara residence of Shri Siddhi Nath Patgiri and while recording his statement, he received information that a young man's dead body was found at Salpara under Dudhnoi P.S., and with Siddhinath Patgiri he

proceeded to Salpara where he found the dead body near a culvert where Dudhnoi O.C. and staff were already there. He did not examine the dead body closely, as the place fell under Dudhnoi P.S. and came to Goalpara P.S. He continued investigation thereafter, but there was no clue till his transfer to Rangjuli P.S. on 29.9.2000. He was required to submit crime reports to S.P. every day. That was his first visit to Baladmar Bazar. He did not visit the SULFA camp at Bapujinagar but went there only to see whether the pickets were working properly there. The SULFA camp was about $\frac{3}{4}$ kms from the Goalpara P.S. There was no supervisory note from the higher authorities. He knew that Tapan Das killing case preceded this case. He did not base his investigation on the facts that Tapan Das' was an ULFA case while Swapan Patgiri's was related to MASS. He was aware of ULFA killing SULFA or vice versa, but not aware of MASS members being killed by SULFA. He consulted S.P. in different stages of investigation. It was his duty to discuss with him. On no clue being found, he consulted C.I. at every stage of the case but did not seek any instructions from higher authorities. ULFA list was there at the P.S. but he did not remember whether Swapan's name was there or not. He did not hear any ULFA-SULFA clash in Goalpara district. There was no demand on Swapan Patgiri from any extremist group. Asked what was the basis of the note in the C.D. that it could be the handiwork of some extremist organisation, he said that it was on basis of the modus operandi of kidnapping and shooting dead. He did not remember to have heard about any ULFA-SULFA clash. He did not suspect any SULFA man in the case. He did not ascertain whether all the camp SULFAs were or not in the camp on the night of occurrence. He did not inquire in DIO's office about the white numberless Maruti van. He denied the suggestion that police knew that SULFAs committed the crime and was making eye-wash investigation, protected the concerned SULFAs and tried to foist it on some extremist group. He knew that there was a SULFA camp at Dudhnoi but he had not seen it. After 4 years of the incident the camp was not in Shri Rusvelt Rabha's residence but in a hotel. He had not heard that the Dudhnoi SULFA camp used to ply a white Maruti van. He did not know that there was another SULFA camp at Krisnai. He knew that in different such killing cases in Goalpara assailants used Ambassador car, Maruti vans and cars, but he did not try to ascertain to whom the Ambassador car belonged. He heard that Rinku Choudhury was from Dudhnoi, where he served in 2004/5. He knew that his (Rinku's) house was in New Dudhnoi, but he did not know whether the family owned a car. He had no idea as to why in several cases victims have been kidnapped or lifted from other places but their dead bodies were found within Dudhnoi Police station area. He tried to interrogate extremists but did not get any. He denied that the note recorded on 15.7.99 was meant to divert attention from real facts. No extremist organisation claimed responsibility in Swapan Patgiri's case. When observing the modus operandi and attributing it to extremist group, he did not pay attention to the cut and ligature marks on the dead body.

N.W. 5 Shri Upen Chandra Bora was the C.I. /O.C. of Goalpara Sadar P.S. On 11.5.99 he went to meet the S.P. Goalpara and there came Shri Nitya Ranjan Mahanta T.S.I. and thereafter their steps together have already been narrated by him. Coming back from Matia, he proceeded to Durgamandir Bazaar he found their three road crossing checking party and learnt that Shri Swapan Patgiri was the kidnapped person. He proceeded to meet Swapan Patgiri's mother and Uncle Shri Siddhinath Patgiri who sent the FIR to P.S. and enquired of some persons at Beltola, Bapujinagar and Paharfoli areas and returned to P.S. and sent raiding parties to different places and found no clue. As the investigation was continuing he retired in November 2000. He did not know that there was a SULFA camp at Dudhnoi. He knew Shri Rusvelt Rabha but he did not know that his house was at Dudhnoi. He did not hear the name of Rinku Choudhury. He visited Bapujinagar SULFA camp as there were instructions from higher authorities. He found Rusvelt Rabha in that camp. He did not know whether many of the camp SULFAs stayed outside as there was no Roll call. He had no view to express as to who could be behind the incident. He did not have any idea of interrogating the SULFAs in the Bapujinagar camp. They did not take informations from SULFAs for conducting operations, but did not know if others did. He knew of an incident wherein SULFAs were arrested for shooting and killing. He denied the suggestion that he knew SULFA's

involvement but consistently with State's police did not arrest them. He denied the suggestion that at Matia getting the information that the white Maruti van left towards Dudhnoi he did not deliberately pursue the matter and showed no clue. He denied the suggestion that soon after the kidnapping the gathering asked them to pursue the vehicle and instead they lathicharged the gathering to disperse..

This Bora-Mahabta combination has been found both in Tapan Das and Swapan Patgiri cases blamed by the people to have been found soon after the incidents, but not pursuing the culprits promptly, and therefore alleging that they guarded the criminals rather than apprehending them..

This case was the first of its kind in Goalpara district and the contours of criminality are not prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Goalpara area itself. An almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost.. These have been emerging as important factors to be considered in this type of cases. The SULFAs of Dudhnoi SULFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

On the basis of the above evidence on records, and the surrounding circumstances, the identity of the killers has to be made on the basis of the named persons, namely, Shri Rusevelt Rabha, Shri Jagannath Sangma @ Sira, Shri Bipul Rabha, Shri Dhanpati Medhi, and Shri Jayanta Rabha @ Tepa, and; their accomplices will include all those who individually or institutionally aided, excited, abetted, facilitated and carried out the kidnapping, the murder and concealment of the kidnapping and murder of Swapan Patgiri.

(C) Whether there was conspiracy in targeting the victim and the motive behind such killing.

This term is replied in two parts, namely, 1. Conspiracy in targeting, 2. Motive behind such killing.

I. Conspiracy in targeting the victim. Conspiracy in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:-

"When two or more persons agree to do or cause to be done :-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -I. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory Part I of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Swapan Patgiri has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that the family members of Swapan Patgiri were treated by some authorities as an ally of the ULFA. The kidnapping of Mahesh Nath who was predecessor District Chairman of the MASS was an instance. So also was the statement of the S.P. Goalpara Shri Deepak Kumar who allegedly told Shri Siddhinath Patgiri that because he was Chairman of the MASS, his nephew was kidnapped. The ULFA families were requested by various agencies to persuade wards in ULFA to surrender, and were forewarned by the army, the CRPF and police that if they could not be persuaded, by them to join the peace talks and bring peace, the consequences would not be good for the families.. The persons who participated in the act of actual killing on the fateful evening, must have been the same or their agents and accomplices and as such, there could be no other answer than that there was criminal conspiracy in the killing. of Swapan Patgiri Therefore, there could be no doubt that forwarners having been a part of the conspiracy. The then Chief Minister published press appeals to the members of ULFA families to persuade their ULFA members to give up path of violence and surrender, the Army, the CRPF and the police accordingly advised the families, and also forewarned that consequences of failure to do so would not be good for the family.. There is evidence to show that the SULFAs were enjoying protection from the police. This may have disabled the police from taking the right action against the SULFA in this case. Similar situation was found in case of Nalbari police sheltering SULFAs. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. . We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Swapan Patgiri there were 5/6 named persons in the act of killing. But there was a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing shows that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, it is held that there was conspiracy in this killing case.

II. Motive Behind Killings.. The Motive. behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of Shri Siddhinath Patgiri having then been the District Chairman of Manab Adhikar Sangram Samity (MASS) which, rightly or wrongly, has been treated as an organisation in support of the ULFA, and hence it is an ULFA related case. and the motive behind the killing is explainable as perpetuation of A.G.P. rule by getting rid of the ULFAs, their family members and their relatives, by elimination and denoralisation. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in deposition of the then Chief Minister Mahanta. in another case. There is evidence of some persons having visited the shop of Swapan Patgiri during the day before kidnapping, but Swapan was not in his shop.. A course of conduct by different agencies towards similar persuatuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family, and thereafter finally culminating in their

kidnapping and killing support such a conclusion. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring them back to peace talks, and why relatives who failed to do so should be secretly killed? The manner in, the weapons with, which the victims have been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remote-orchestrated. Those in helm of those departments must be held liable and must be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. In this case Mass was treated on the same footing as ULFA.

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as - a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the kidnapping and the killing.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing.

—This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved.

Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light. We have, of course, to follow the general principles of evidence enunciated by the authorities on evidence, in pinpointing the responsibility beyond reasonable doubt in this case.

The best evidence rule "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that 'the best evidence must be given of which the nature of the case permits,' has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson, "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore relevant and admissible.

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera, knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agreement or disagreement is perceived immediately, by comparison of the ideas themselves; demonstrative when it is perceived mediately, i.e., when it is deduced from a comparison each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The following common characteristics of the first group of seven cases are found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely:

1. That this killing involved an ULFA family, being that of the ULFA Chief Shri Arabinda Rajkhowa, and its investigation is kept pending, but no clue...
2. Unlike in other cases, this killing, of Dimba Rajkonwar, were committed in the evening, light, but light was off immediately thereafter, to allow the assailants to escape under darkness.
- 3.. The assailants covered their faces with black wrappers and caps, to avoid being identified.
4. The weapon used in killing was a firearms of prohibited bore being .32/.38 bores generally found in police-military situations
5. The firearms being of prohibited bores, forensic examination of the material exhibits was avoided or unduly delayed. The report was collected long after. Investigation fizzled out..

6. The vehicle used was reportedly a red coloured Yamaha Motor cycle without number plate which was never seized or taken into custody, despite having one answering the description, informed by its owner.

7. There were police patrolling in the crime areas prior and posterior to, but not during the killing.

8. That the army was ubiquitous. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send advance team to locate and survey the house, then to send armed and masked persons to shoot them dead or take them away and kill them secretly and throw the bodies somewhere. In this case killing was in the evening.

9. There was general resentment and decay against the Unified Command Structure/ Chief Minister.

10. There was connivance of SULFA; and omission to make any SULFA an accused despite clues.

11. The investigation did not commensurate with the seriousness of the crime perpetrated.

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. No condolence message was sent from the Govt. of Assam to the victim family.

14. No ex-gratia/compensatory payment was made or offered by the Govt. of Assam in this case.

15. In this case death penalty has been imposed for "status offences," on Dinba Rajkonwar for being a member of ULFA family of the ULFA Chief Shri Arabinda Rajkhowa.

16. From some cases "remote orchestration" and principle of "kill and get killed" are deducible. The remote was supposed to be at Home.

This conclusion is based on the similarities of the seven cases in almost all respects, which could not be so, unless there was remote orchestration from higher authorities. The remote was supposed to have been at Home. The kill and get killed applied to a SULFA leader.

Questioned on the two cases, namely, that of killing of Dimba Rajkonwar and that of Dr.

Dharanidhar Das and family, Shri G.M. Sroavastava said (A., 88) Normally police compares the cases on the basis of *modus operandi* and circumstances. In this case I have not seen the case diary nor I have seen the statements. But the reason and motive behind the killings may come out only after thorough investigation of the situation and examining in detail every aspect and possibilities by investigation officers and the officers supervisory level.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection, But using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondent superior" will surely apply; and for all the lapses and misdeeds at the

lower levels, higher level authorities shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period following the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their own governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter.

(F) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months, and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy..Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is

the terminus of internal disturbances and army deployment in the State. Under Article 355 of the Constitution of India it is the duty of the Union of India to protect against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. There is no problem of external aggression in Assam, the only problem being that of internal disturbance. If that is solved and normalcy is restored, the State will be in a position to carry on in accordance with the provisions of the Constitution of India..

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner.. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society provided he is capable of doing so if called upon. There is no doubt that our Police force is one of the best in the country. To make our police still more and

more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters". trouble-shooters and cellaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the insolvency principle is not applicable in criminal law.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "resposndent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities also shall be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective respsnibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favoue in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. The insolvency principle is not applicable to criminal matters..

this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy..Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constututionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State. Under Article 355 of the Constitution of India it is the duty of the Union of India to protect against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution. There is no problem of external aggression in Assam, the only problem being that of internal disturbance. If that is solved and normalcy is restored, the State will be in a position to carry on in accordaanaance with the provisions of the Constitution of India.

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gracia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty

to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. The public prosecution may result in punishment of the culprits, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. In this case Swapan Patgiri's father expired and his mother is alive. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the mother Smti Renu Patgir, for the benefit of the family, a sum of Rs. 5.00.000 (Rupees five lakhs) only. forthwith. More than seven years have already elapsed, and it brooks no farther delay.

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(14)

SHRI DINESH CHANDRA. RAI KILLING CASE

GoalpaGoalpara Case No.ra P.S. Case No.231/99

(U/s. 302/ 34 IPC r/w s. 25(1) (a)/27 of Arms Act)

Dae of occurrence 24.12.99

By this Commission's order dated 5.4.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification . No.PLA 331/2005/1 dated 22.8.2995, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commiaain is to inquire into, in each case.the following terms of reference, and any other matters with recommendations, if any, namely:

"(a) Circumstances , in each case, leading to the killing of its victim..

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victim and the motive behind such killing.

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing.

(e)To make recommendations to prevent recurrence of such killing.

(f) Any other matter related to or relevant to the purpose of this inquiry;"

(A) Circumstances leading to the killing of Shri Dinesh Chandra Rai.

On 24.12.99, morning, an FIR was lodged at the Agia Outpost of Goalpara Police Station by Shri Dhiren Ch. Rai to the effect "that at night of 23.12.99 at about 1 A.M. unknown miscreants came to his house, caused various excesses and indiscriminate firings killing his eldest brother Shri Dinesh Ch Rai at the centre of their courtyard, and left"

As P.W. 1 Shri Dhiren Ch. Rai stated that they were three brothers Shri Dinesh Ch. Rai, a bachelor, was the eldest, he was the middle, and the youngest was Shri Mani Kanta Rai; and that they all lived in a joint family..Hearing about earlier secret killings, they decided not to open the door if anyone called at night. On 3.12.99 at about 12 midnight / 1 A.M about three persons entered their courtyard and struck against their door and tried to open it. They spoke in local language which indicated that they were non-Hindi people After about half an hour of their continuing to do so, without any reason, Dinesh Ch. Rai opened the door and the assailants caught hold of him and made him call other inmates who did not respond. Then they heard repeated firing sounds, but did not know that their brother was being killed. A little thereafter villagers came and called them from outside and coming out they found their brother killed. The assailants left before the arrival of the villagers. Their nephew wrote an ejahar which was dictated and signed by Dinesh Ch. Rai, and it was lodged at the Agia Outpost. of Goalpara Police Station whereupon the .Goalpara case No. 231/99 u/s. 302/ 34 IPC r/w s. 25(1) (a)/27 of Arms Act was registered.

N..W.3 Dr. Sahidul Rahman found the following injuries on the body of Shri Dinesh Rai.

1. Injury on upper lip on right side; 2. Penetrating injury below right eye 2 cm x 2cm. 3. Exit of injury N. 1 and 2 below left eye and left eye, skull etc., brain blown outside. 4. Penetrating wound below and medial to right nipple, size 2 cm x 2cm. Penetrating wound above right nipple 2cm x 2cm. 6. Exit wound of 5 through back of chest of left side 5 cm x 5 cm. All the injuries were fatal, and one may cause instantaneous death, individually. As regards weapons used, the doctor opined that sophisticated and powerful rifles were used from close range There was, therefore no doubt that the death of Shri Dinesh Ch. Rai was caused by the bullet injuries caused by the assailants..

(B) The identity of the killers, and their accomplices, if any

The killing of Dinesh Chandra Rai was secret as to the identity of the killers and their accomplices though not as to time and manner of killing. It is also a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. Perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or *negligence*. Thus, accomplices include, while accessories exclude the perpetrator of the crime. However, often they are used as synonymous.

The identity of the killers has to be based on evidence on record. P.W. 1 said that the night was moon-lit and their house has cement-plastered wall, with soors having small gaps through which they could peep outside. So peeping they saw three persons in civil dress with black trousers and jackets

and some police-like caps.; At that time they saw only three persons with arms like A.K. 47 rifles, but later learnt that there were two others waiting about a furlong away. The three were talking in Hindi, but from their intonation we thought that they were non-Hindi Rabhas. There were ULFAs among the neighbouring Rabhas, some of them having been led by him to surrender whom he could have identified if produced before him.

P.W. 1. Dhiren Rai did not know why his elder brother was killed, but said that his younger brother's son Jayanta Rai was in the ULFA and that could be the reason for the killing of his elder brother. He believed that the premature submission of the F.R. within two and half years, without any clue in the case was because of complicity of police with SULFAs in the killing

P.W. 2 Shri Gajen Rai, a co-villager, deposed that Dinesh Rai was a popular social worker having no enmity with any one, and he believed that Dinesh was killed only because of one of his brother's son was in the ULFA; and that Dinesh Rai himself apprehended the danger before his death as he himself disclosed. Dinesh Rai did not belong to any political party. He did not participate in anti-foreigner activities, he was critical of Govt activities, but never attended any public meeting. Having heard about the similar cases, he also believed that the Government was in league with the SULFAs in this case..

N.W. 2. Shri Kamal Ch. Bora, of Agia outpost, the I.O. of this case deposed that arriving at the place of occurrence taking stock of the situation and the dead body, he was of the impression that there were random firings and the inmates could save themselves being behind the half brick walls. He seized 11 Nos. of empty cases of A.K. 47 rifle and 3 numbers of small, and 4 nos of fired bullets, from near the dead body, and seized them. Meanwhile the Circle Inspector and the Addl. S.P.(HQ)(Mr. Seal (since expired) arrived and issued necessary instructions. He examined as many as 11 witnesses from inmates and villagers. He said that extremist activities increased in Goalpara district since 1997; and that he knew and had met and talked to Dhiren Rai, but did not know the deceased Dinesh Rai. He did not ask any of the inmates as to whether they would be able to identify the assailants if produced before them. According to him, there was no army camp within Rongjuli jurisdiction.

Regarding the language used by the assailants he told that at first they spoke in Hindi, but later in local Assamese accent. When shown that Dhiren Rai said that they were Rabha Tribals and that he deliberately did not ask that question, he denied the suggestion and also denied that he deliberately did not follow up the instruction of the Addl. S.P.(HQ) to ascertain to which group those tribals belonged. He further said that he suspected and examined the following three Rabha tribals. Namely. Prasanta Rabha, son of Mahesh Rabha of village Dariguri. Sanjip Rabha, son of Jogen Rabha of village Dariguri. Digen Rabha, alias Deven Rabha son of Mrigen Rabha of Village Dariguri, P.S. Goulpara, but there

was no mention that they were SULFAs; and that they did not belong to any organization. He also examined Niren Rabha of Himajuli village, who also was not a SULFA. He admitted that there was a sizable number of ULFAs in Rangjuli area and that a good number of them had surrendered. Records of SULFAs were maintained at police headquarters. He denied the suggestion that he deliberately did not pursue the clue as to SULFAs as indicated by the inmates of the house, for reasons best known to him. The I.O. Shri Kamal Ch. Bora was aware of the ULFA family members killing cases in Goalpara and other districts of Assam. He was also told by Kamal Ali, examined under S,161 Cr.P.C. that Shri Dhiren Rai's son Shri Jayanta Rai was an ULFA. Yet he says, the question of probability of SULFA being involved in the crime occurred in his mind, but he could not do anything in the absence of any clue.

Regarding apprehension of killing in the minds of the members of the family, he was not aware of it or it having been told to any police officer. He did not know that Jayanta Rai surrendered after this incident. He knew SULFAs Rusevelt Rabha and Pirandar Rava only of the Rabha SULFAs and that Rusevelt Rabha was always seen in a vehicle. He could not locate the black Maruti Zypsy allegedly used in the crime, though he interrogated several people, but he did not go to the DTO for the purpose, nor did he conduct any raid. He did not consider SULFAs to be extremists, nor did he know about illegal activities of them.

The empty cartridge cases and fired bullets and ammunition recovered from the place of occurrence were not sent for forensic/ballistic examination, as according to him, "such examination will be necessary only if the arms were also found to trace whether those ammunitions were fired from those arms as in this case no arms were recovered, so it was not necessary to send those ammunition for ballistic examination". He also did not examine the probable makes, bores and other particulars of the weapons. Reason for not sending those for examination was that he was otherwise busy in several matters. He could not also follow up the instructions of the ADDI S.P.(HQ) for the same reason.

The distance between the Bhelakhamar village of Jayanta Rai and the Agia outpost was about 18 kms. During his tenure in Agia outpost, two killings, namely, this and the Mahesh Nath's killing, both being ULFA related cases. He did not know whether the State Government was involved in conspiracy with the SULFAs, as were alleged in some other such cases. He handed over charge on 17.7.2001 being transferred.

Successor Shri Sunil Ch. Sarma was entrusted with investigation of the case on 10.11.2001. According to him, once the SSP(CID) wanted the case and he took the case diary to him, and it was examined by one DSP Shri A. Sarma went through the case diary taking from him, and the DSP issued certain verbal instructions on its investigation, one of those being to send the material exhibits to the Goalpara Police Reserve Armourer for examination. But the I.O.'s transfer order having been issued on 1.2.2002, he could not follow it up. The case diary was with him from 10.11.2001 to 8.7.2002. No entry was made from 10.11.2001 to 8.2.2002. and he did not think about its clue.

Successor I.O. Shri Achyut Talukdar received the Case Diary in Feb/March 2002. After about 2 months of his investigation he submitted the proposal for F.R. (Final Report) and it was approved by the then Addl S.P. (HQ) Mr. Bijoy Kilagram whereafter it was placed before the CJM Goalpara on 10.9.2002. Shri Talukdar admitted that in this case no clue was found, no Charge sheet submitted and none made accused. He also admitted that before finalization of F.R. no notice was recorded to have been served on the complainant and no notice is recorded to have been issued by the CJM. No order was shown to have been issued by the O.C. Goalpara for issue of the F.R. Shri Talukdar also admitted that as I.O. he did not make any observation, suggestion or recommendation for issue of F.R. in this case at that stage. He denied the suggestion that this was so on pressure from above.

N.W. 1. Shri Deepak Kumar, I.P.S. , the then S.P. Goalpara , in para 2 of his affidavit dated 13.9.2006, said that "while he was S.P. Goalpara, he was informed about the incident of Goalpara P.S/ case No. 231/ 99 wherein one person was killed, namely. Shri Dinesh Ch. Rai, a resident of Village Bhelakhmar under P.O. & P.S. Goalpara in the district of Goalpara, Assam." In para 3 thereof he said that "on receiving the information, taken all necessary steps about the incident."

Cross- examined by Shri P.K. Musahari, the learned Sr. Govt. Advocate Assam, Mr. Deepak Kumar said that the entire district of Goalpara was equally backward and that during his tenure the district was infested more or less by different extremist groups such as ULFA, RNSF (Rabha National Security Force), BLT, ANVF (Achik National Volunteer Force). The bordering areas appeared to be more thickly infested because of their facilities of retrieving beyond the border and to return back for operation; and that these areas were ideal for operations and networking by the extremists. Ambushing, kidnapping and killing incidents were gradually on the rise. As regards force, during his time there was no army column, but 4 companies of CRPF and the District Executive Force were there under him.

According to the S.P. records of ULFAs, SULFAs and Other extremist groups were maintained by the District administration. Police administration always tried for surrender of extremists; and 76 RNSF boys surrendered.

As regards the investigation of the case and supervision thereof Mr. Kumar's answers were of must have, should have, could have type. He came to know of the case in the morning of 24.12.99, he must have visited the place of occurrence; the other officers must have visited before him; he did not issue any supervisory instructions, but it was duty of Addl S.P.(HQ) to have done so; such notes were to be placed before the S.P. for information only; that the I.O. alone be able to answer information about investigation matters; he came to know about Jayabta Rai having been an ULFA only in investigation of the case; but he did not remember whether he visited his house;

Mr. Kumar categorically said that the police always appealed to the ULFAs for their surrender; and Govt. also made some rules as to to whom, and how to surrender and what were the benefits available to surrenderees. He said that it was their duty to visit the houses and take informations about their ULFA members, though he did not remember whether he at all visited Jayanta Rai's family house for the purpose; and that without being informed he could not say that some groups even warned the family that should they failed to persuade their ULFA members to come and surrender, the consequences for the family would not be good. But he did not rule that out. If SULFAs attempted to make their erstwhile ULFA colleagues to surrender, it would, surely receive approval of Police administration, he said.

Replying to a question whether the Final Report to be submitted was to be brought to the notice of the S.P. he said that it was to be approved by the Addl S.P.(HQ); and that he was transferred out of Goalpara in October 2000, while the F.R. was submitted on 10.5.02. As to when Final Report is to be submitted he said that there was no fixed time schedule, but when all efforts to find out a clue failed, the Final Report is submitted by Police and the CJM accepts it. Referring to the killings of Shri Dinba Rajkonwar who was elder brother of ULFA Chief Shri Arabinda Rajkhowa, Phuleswari Das's family being the family of ULFA Cultural Secretary and few other cases of the line he was asked whether that aspect was considered in the case, he said yes. Asked what would be his inference if the modus operandi of several cases be the same, he said that killing always had the same modus operandi. The following question and answer show:

Q. In a concrete case where the members of the family were advised to bring back their ULFA members to the peace talks and they were also told that the consequences of their failure to do so would

not be good for the family and unfortunately after some time a member of the family who was so told and so forewarned was killed, what would be your normal conclusion?

A. Naturally a suspicion will arise.

In cross-examination by Dr.Y.K.Phukan, the learned senior counsel for the Commission, Mr. Kumar said that he attended all the meetings of Deputy Commissioners and S.P.s of the districts organized by the then Chief Minister Shri P.K. Mahanta apparently to discuss Law and order problem, but he did not remember how many times and that without seeing the minutes he could not say whether there were discussions about the killing of members of ULFA families, or progress or investigation status of such cases. He also said that in the meetings of high police officers organized by the DGP the question of investigation status of cases involving killings of members of ULFA families inquired into or discussed the reply was that in such type of meetings, the In-Charge of CID, Police Headquarter discuss about the progress or investigation failures, if any. Mr Kumar also answered that while he was S.P. Goalpara. The IGP(Operations) was Shri G.M. Srivastava, and he attended all the meetings called by the then Chief Minister Sshri Prafulla Kumar Mahanta., and also all the meetings called by the then DGP, Assam.; and that Shri Srivastava used to advise them "to control the situation in a better way"

Mr Kumar said that there was a SULFA camp at Goalpara for SULFAs and RNSF surrenderees and an area of 100 bighas was given to them for their rehabilitation. There were about 50 SULFAs most of them living in their houses. As regards utilization of services of SULFAs he said while their services were not utilised, there was no bar to their being utilized as informers and guides. ..

This case was the first of its kind in Goalpara district and the contours of criminality are not prominent. However, from its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been from Dhoopdhara area itself, An almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost.. These have been emerging as important factors to be considered in this type of cases: The SULFAs of Dudhnoi SULFA camp are suspected to be the perpetrators in this case. All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

Considering the evidence on record and the surrounding circumstances, **the identity of the killers** may be limited to SULFAs of Goalpara camp in nexus with the then Goalpara police

(C)Whether there was any conspiracy in targeting the victim and motive behind such killing

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

1. Conspiracy in targeting the victim. Conspiracy. in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows:

"when two or more persons agree to do or cause to be done :-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object..

Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

"A person abets the doing of a thing, who-

First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Dinesh Ch. Rai has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators?. It is in evidence that Dinesh Ch. Rai was requested by various agencies to persuade his younger brother's son Shri Jayanta Rai, who has been of ULFA, and was forewarned by the army, that if could not be persuaded, by him, to join the peace talks and bring peace, the consequences would not be good for the family. Earlier in 1994, some unknown persons came to his quarter and enquired of his whereabouts, most probably to kill him, as some other person whose whereabouts could be collected at that time were secretly killed, and lot of troubles were created at the residence of their father at Lakowa, and the fact that two persons participated in the act of actual killing on the fateful evening, there can be no other answer than that there was criminal conspiracy in the killing. There is evidence to show that the SULFA camp was in touch with the police. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Dinesh Rai were several persons in the act of shooting. But there was a course of conduct involving the deciders of the course of action culminating in the killing. The earlier coming of the half pant ersting, msdked and armed persons was also a part of the conspiracy. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the act of killing shows that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, it has to be held that there was conspiracy in this case..

II. Motive Behind Killing..The.Motive. behind the killing may be analysed as direct or immediate; and the ultimate. Regarding the ultimate motive, there is evidence of Dinesh Ch. Rai's brother's son Shri Jayanta Rai having been in the ULFA, and hence it is an ULFA related case, and the motive behind the killing is explainable as perpetuation of AG.P. rule by getting rid of the ULFAs, their family memvrs and their relatives, by elimination and demoralisation. The fact that there was a request made to the literary organizations and Sahitya Sabhas of the State to persuade the ULFAs to surrender is in deposition of the then Chief Minister Mahanta. in another case. There is evidence of the Army menm policemen and others having visited the family house and first

advising to recall Jayanta Rai from ULFA and later forewarning that the consequences of the failure to do so would be serious. A course of conduct by different agencies towards similar persuatuin and the forewarning that in case of failure to effect surrender consequences would not be good for the family, and thereafter finally culminating in their killing support such a conclusion.. Contemporary similar killings brought in evidence of this case also showed that it was the consistent pattern to follow. One may question why, in face of the constitutional and legal right for every citizen to freedom of thought and belief, freedom of association, the relatives need be pressurized to bring them back to peace talks, and why relatives who failed to do so should be secretly killed? The manner in, the weapons with, which the victims have been killed leaves no doubt that the killers enjoyed complete immunity for their acts of killing. The way in which in all the cases the investigations were made to fizzle out shows that the police is in collaboration with them. All these also prove that the entire scheme is being remote- orchestrated. Those in helm of those deparments must be held liable and must be brought to justice. The matter being of criminal nature proof must be beyond reasonable doubt. The evidence in series of cases with common characteristics lead to such a conclusion beyond reasonable doubt. .

The immediate motive of the killers could be any reward or satisfaction emanating from those who harboured the ultimate motive and engaged the killers. The desire of a consequence is the motive for an action. Intention and motive are often used synonymously. In criminal law the question of motive is not material where there is direct evidence of the acts of the accused and the acts themselves are sufficient to disclose the intention of the actor. In such cases while motive is immaterial, intention is material.. In the Explanation to section 161 IPC "a motive or reward for doing is illustrated as -a person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done. In this sense, motive of the killing will mean that for which the killer has committed the lilling and without which he would not.

(D) Pinpointing responsibility on persons involved directly or indirectly in commission of killing. This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions "involved directly or indirectly in commission of killing" This enables us to act on basis of integrated evidence rather thsn on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

Best on "The Principles of The Law of Evidence." (9th ed) in its Introduction (pp.4-5) said:

6. "With regard to intensity of persuasion, the faculties of the human mind are comprehended in the genera. knowledge and judgment. 1. By "knowledge" strictly speaking, is meant an actual perception of the agreement or disagreement of any of our ideas ; and it is only to such a perception that the term "certainty" is properly applicable. Knowledge is intuitive when this agrcement or disagreement is perceived immediately, by comparision of the ideas themselves; demonstrative when it is perceived mediately, i.e, when it is deduced from a comparision each with intervening ideas which has a constant and immutable connection with them, as in the case of mathematical truths of which the mind has taken in the proofs, and lastly through the agency of our senses, we obtain a perception of the senses the existence of external objects, our knowledge is said to be sensitive. But knowledge and certainty are constantly used in a secondary sense, which it is important not to overlook; viz, as synonymous with settled belief or reasonable conviction; as when we say that such a one received stolen goods knowing them to have been stolen or that we are certain or morally certain, of the existence of such a fact etc."

7. 2. "Judgment", "the other faculty of the mind though inferior to knowledge in respect of intensity of persuasion, plays quite as important a part in human speculation and action, and, as connected with jurisprudence, demands our attention even more. It is the faculty by which our minds take ideas to agree or disagree, facts or propositions to be true or false, by the aid of intervening ideas whose connection with them is either not constant and immutable, or is not perceived to be so.. The foundation of this is the probability or likelihood of that agreement or disagreement, of the truth or falsehood, deduced or presumed from its conformity or repugnancy to our knowledge, observation, and experience. Judgement is often based on the testimony vouching their observation or experience but this is clearly a branch of the former, as our belief in such cases rests on a presumption of the accuracy and veracity of the narrators."

The observation, accuracy and veracity of the narrating witnesses are, therefore, important. However, when no less a person than the then Superintendent of Police Shri K.C. Deka has stated about political interference of the Executive police functioning, one has to be cautious on the appreciation of evidence.

The best evidence rule. "Phipson on Evidence," 9th ed. P. 51 under caption : "The Best Evidence Rule. Strict Proof" Says: "The maxim that "the best evidence must be given of which the nature of the case permits." has often been regarded as expressing the great fundamental principle upon which the law of evidence depends. Although, however, it played a conspicuous part in the early history of the subject, the maxim at the present day affords but little practical guidance. The applicability of the rule depends on the nature of the subject to be proved. In the complicated nature of things today the emphasis has somewhat changed. (P. 53) According to Phipson.. "In the present day, then, it is not true that the best evidence must, or even may, always be given, though its non-production may be matter for comment or affect the weight of that which is produced. All admissible evidence is in general equally receivable. Thus, circumstantial evidence is no longer excluded by direct, and even in criminal cases the *corpus delicti* may generally be established by either species, or, indeed, by the defendant's mere admissions out of Court".

The Supreme Court says that conspiracies are often hatched in secrecy; and that circumstantial evidence is generally available in such cases. The similarity of the cases in this group of seven cases is therefore is relevant and admissible.

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The following common characteristics of the first group of seven cases are also found in this case while answering its terms of reference so as to justify a finding of a general plan of "Ulfocide" i.e., deliberate killing of ULFAs and their families and relatives, on their basis, namely :

While answering its terms of reference in this case, **the following common characteristics of the first group of seven cases** are also found in this case, so as to justify a finding of a general plan of "Ulfocide", that it, deliberate killing of ULFAs, their families and relatives, on their basis, namely :

1..That this killing involved an ULFA family, namely, that of ULFA Jayanta Rai, and investigations ended in Final Reports (F.R) submitted on 10.5.2002, pretending to have found no clue, and in abuse of the process of the criminal court..

2.That the killing was committed at dead of night, by armed assailants who covered their faces with black cloth, and spoke in Assamese to awaken the inmates for killing. Dinesh Rai.

3..That assailants were armed with sophisticated firearms of prohibited bores.

4. That the weapons used in killing were firearms of different sizes, bores and calibers, mostly of prohibited bores normally found in police-military situations

5. That as firearms of prohibited bores were used; forensic/ballistic examination of exhibits were y avoided, and investigation ultimately fizzling out.

6. That the vehicles used, a black Maruti Gypsies, without Registration numbers.

7. That there were no police patrolling in the crime area..

8. That the army was ubiquitous. By army we mean the armed forces of the Union deployed in Assam in aid of civil power. There was lurking evidence of Police-SULFA nexus in the killings, some of the latter being constituted into an extra-constitutional authority and used as the executioners. the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send an advance team to survey the location and structure of the house, then to send armed and masked men to the family house at dead of night, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere..

9. That there was general resentment and decry against the Unified Command Structure/ Chief Minister.

10. That there has been connivance of SULFAs; and in this killing case no SULFA has been made accused or arrested.

11. That the investigation did not commensurate with the seriousness of the crime perpetrated.

12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.

13. That no condolence message was sent from the then Govt. of Assam to the victim family

14. That no ex-gratia/compensatory payment was made by the then Govt. of Assam in this case.

15. That in this case there is remote-orchestrated "Ulfocide" that is, deliberate killing of a member of an ULFA family, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA related family..

✓ 16. From this case "remote-orchestration" is deducible, it being from "Home", that is, the Home Minister, the apex authority committing Ulfocide through its instrumentalities including unholy police-SULFA nexus, some of the latter being used as striking arms or as executioners..

Considering the evidence and the surrounding circumstances, it is considered to be beyond reasonable doubt to pinpoint the responsibility on the concerned SULFAs of the Goalpara SULFA camp including Shri Rusevelt Rabha and Puranddar Rabha in nexus with the Goalpara police, the former being used as the striking arm or as the executioners. The accomplices will be all those Govt agencies that aided, abetted, instigated, helped and facilitated, either individually, or institutionally, in the commission of killing of Shri Dinesh Ch. Rai.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is an Order of His Excellency, the Governor of Assam and neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed in restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its

people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, the student organizations, the outfits and the general public. Restoration of normalcy will also effect economy. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State. Under Article 355 of the Constitution of India the Union of India is to protect the State from external aggression and internal disturbances. There has been no external aggression in Assam. The internal disturbance is the problem to be solved as discussed above.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the long term measures may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country. The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss)" **Sukracharya's Dandaniti is based on danda**, meaning, punishment. Ancient sages said that without *danda matsyanyaya will prevail* and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society needs to be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner. While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society. There is no doubt that our Police force is one of the best in the

country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea, their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters", trouble-shooters and collaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. However, the Insolvency principle is not applicable in criminal matters.

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondent superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall also be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here, except in the criminal cases, the insolvency principle should be followed and the political persons also be given fair field and no favour in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. Insolvency principle is not applicable in criminal matters.

(F) Any other

(6) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to the joint family of Shri Dhiren Ch. Rai and Shri Mani Kanta Rai of the victim joint family, for the benefit of the joint family, a sum of Rs5,00,000 (Rupees five lakhs) only forthwith. More than seven years have already elapsed, and it brooks no farther delay.

(15)

SHRI LAKHAN RABHA KILLING CASE**Goalpara P.S. case No.76/ 2000**

By this Commission's order dated 23.8.2006, by virtue of the authority conferred on it by the Government of Assam's Notification No.PLA.331/2005/2 dated 3rd September 2005, in continuation of the earlier Notification No.PLA 331/2005/1 dated 22.8.2005, after hearing the applicant and the learned Senior Counsel for the Commission and the learned Senior Govt. Advocate, Assam, and in the interest of justice, it has taken up this case for inquiry.

By virtue of the aforesaid Notifications the Commission is to inquire into, in each case, the following terms of reference, and any other matters with recommendations, if any, namely:

"(a) Circumstances, in each case, leading to the killing of its victim

(b) Identity of the killer(s) and accomplice(s), if any.

(c) To find out whether there was any conspiracy in targeting the victims and the motive behind such killing.

(d) Pinpoint responsibility on persons who were involved directly or indirectly in the commission of such killing.

(e) To make recommendations to prevent recurrence of such killings

(f) Any other matter related to or relevant to the purpose of this inquiry."

"(A) Circumstances leading to the killing of Shri Lakhan Rabha.

The G.R. case records show that on information received from Shri Ram Chandra Rabha, son of Shri Sankhadhar Rabha of Dakuakata village. P.S. Dhupdhara, district Goalpara, on 10.12.2000 at about 8.10 A.M. the O.C. Dhupdhara P.S. Shri Pradip Kr. Talukdar received a telephone call from Addl. S.P. Goalpara informing him that the brother of ULFA member Shri Satrugna Rabha, Shri Lakhan Rabha was kidnapped and killed and that he was to investigate the case. Making a G.D. entry, he, took up investigation, and, with staff, immediately proceeded to the place of occurrence at about 9 A.M. on 10.12.2000 The inquest was done by Shri Arup Pathak A.C.S. Circle Officer and Executive Magistrate in presence of Ram Chandra Rabha and two other relatives of the deceased. Total six bullet injuries were found. One on head, one below the arm pit and four injuries on chest.

Narpati Rabha s/o. Late Kania Rabha aged about 55 years deposed that Late Lakhan Rabha was his nephew being son of his eldest brother Chakradhar Rabha, They were three brothers, the eldest being Lankeswar Rabha, next Sankardhar Rabha, who was the father of Lakhan Rabha, and himself was the youngest. Lankeswar was in the army and later living separately after retirement. He and Sankardhar lived in joint family. On the fateful night they were all sleeping in their respective rooms. On 10.12.2000 at about 11 P.M some 10 to 12 youths, faces covered with black cloths, came to their house, all in civil dress. They first knocked at the door and when he (Narpati Rabha) came out with torch in hand, they snatched away the torch light from him, and asked him to show which member of them was sleeping in which room; and he showed all the rooms and woke up all the members. Thus all the family members were made to stand in the inner courtyard. They picked up Lakhan Rabha saying, in Assamese, that they wanted him to show someone's house. The inmates thought that he (Lakhan) would come back home after showing the house they wanted, but Lakhan did not return. In the

morning they searched for Lakhan Rabha when two persons arrived from Belpara and informed that a dead body was lying in the middle of the Belpara road, and also that the dead body was that of one of their family. Having heard that Sankardhar Rabha with a co-villager left for Belpara and there found the dead body of Lakhan Rabha. Ram Chandra Rabha lodged an ejahar in Rongjuli P.S. on 10.12.2000 itself. Thereafter the police arrived there and started investigation.

Narapati Rabha deposed that Lakhan Rabha was picked up and killed only because of his brother Satrugha Rabha belonged to ULFA.

P.W. 3 Dr. Shyamalendu Das in post-mortem examination found the following three injuries on the dead body of Lakhan Rabha. 1. One bullet mark on left parietal and frontal area of the head;

2. Three gun shot injuries over the front of chest at the level of 4th space left side of the chest with posterior extension of the wound.

3. A gun shot injury is noted over the left arm.

Dr. explained that by gun shot he meant any fire arm shot, not of shot gun only. No. 2 was the wound of entry and No. 3 the exit. The entry and exit of wound No. 1 could not be ascertained as the scalp was scattered.

ON 11.12.2000 the then Minister Shri Akan Rabha paid Rs.5,000 in cash for Sraddha ceremony of Lakhan Rabha.

(B) The identity of the killers and their accomplices, if any.

The killing of Lakhan Rabha was secret both as to the identity of the killers and their accomplices and also as to the actual place of killing. It is also a developed principle of law that accomplices are the parties to the crime. On the basis of degrees of complicity to the crime, accomplices are divided into perpetrators and accessories. An accessory is one who excites or helps the commission of a crime by the perpetrator. The perpetrator is exclusively the person who in law performs the crime. More precisely, the perpetrator is the person who, being directly struck at by the criminal prohibition, offends against it with the necessary *mens rea* or negligence. Thus, accomplices include, while accessories exclude, the perpetrator of the crime. However, often they are used as synonymous.

P.W. 1 Narapati said that when the assailants, who spoke in Assamese, took away Lakhan, said to be for finding out a house, the inmates of the house thought that he would be sent back after the house was pointed out. The fact that assailants first enquired of Susu, and not Lakhan, may have misled them.

P.W. 2 Shri Ram Chandra Rabha deposed that they were six brothers, Lakhan Rabha, the second, has been killed. On the night of 10.12.2000 he was sleeping in his own house, 2 furlongs away from their family house; and he heard the sound of two vehicles coming with their head lights off, and also heard forceful shutting of vehicle doors, and as they were used to such coming and going of army and police vehicles to the houses, he did not come out. After some time he heard similar forceful shutting of vehicle doors, and of the vehicles speeding away. In the morning, hearing on the road the news of killing of his brother he was crest fallen and his maternal uncle Shri Debesh Das wrote an ejahar and obtained his signature which he gave to police at the place where the dead body of Lakhan Rabha was found. He said that before the incident the O.C. Hari Mohan Singh came to his house; and that at that time the apprehension of secret killers was in the air, and they had a threat perception, but could not help. He said that he was never taken to the Army camp and that Lakhan was not associated with ULFA or SULFA.

Asked about the Final Report submitted in the case he said that their feeling was that police did not undertake the investigation with proper care and suggested the Final Report. Asked whether he appeared in response to the third notice he said that they did not as they could not pursue the matter of their own due to financial difficulties.

Shri Pradip Kumar Talukdar, the then O.C. Dhoopdhara P.S. stated that the Dhoopdhara Police Station comprised the trijunction between Kamrup district on the east, the Goalpara district on the west and the State of Meghalaya North. According to him it was heaven for lawbreakers and the criminals, as they could avoid police dragnet simply by crossing over to the neighbouring district. The extremist outfits also had the same advantage; and that they maintained a close network in the region. In fact, he said, all the outfits, including the MULTA (Muslim United Liberation Tigers of Assam) had their camps side by side in the opposite Meghalaya region. He also said that while the house of Lakhan Rabha fell within the jurisdiction of Dhoopdhara P.S. the spot where his dead body was found fell within the jurisdiction of Rangjuli P.S. and, therefore, the Rangjuli P.S. registered a case, performed the inquest and got the post-mortem report, and thereafter sent the case to Dhoopdhara and the two cases were amalgamated and investigated. At the place of occurrence, besides what were stated in the FIR, that 9/10 black cloth masked boys came to Lakhan's house and first enquired about Susu Rabha, younger brother of Lakhan Rabha and not finding him they took with them Lakhan Rabha "for pointing out a house." I.O. examined u/s.161 Cr. P.C Lakhan Rabha's wife Smti Chinu Bala Rabha, uncle Shri Narapati Rabha, Lakhan's father Sankhadhar Rabha, a neighbour Srimanta Rabha and one Bharat Rabha son of Sankhadhar Rabha. From them it was learnt that the incident occurred at about 1.30 A.M., but no definite clue could be indicated by them. On 5.6.2001 the Rangjuli case papers were sent to Dhoopdhara P.S. and were taken on records of the case. On 28.8.2001 he was transferred to Matia P.S. and handed over the case diary to his successor Shri Himangsu Das IN cross-examination Shri Talukdar mostly emphasized on the trijunction location of the Dhoopdhara P.S. and mentioned of only one ULFA surrender, that of Peadeep Rabha, who, he said, mostly resided at Guwahati. He received general training after recruitment, but no specialized training on investigation. He received no report of investigation from Rangjuli P.S. other than the Inquest and Post-mortem reports and a seizure lost of 1 .9 mm live ammunition, may be pistol or carbine, one empty case of .9mm pistol and one empty case of A.K. 47 rifle, said to have been recovered from the place where the dead body was reportedly found. There was no record of the material exhibits having been sent to Forensic/Ballistic experts for examination, not even to the Battalion Armourer. Narapati Rabha told the I.O. that the assailants spoke in Assamese both for awakening the inmates and among themselves, so said Sankhadhar. They repeated that they enquired of Susu. But when told that he was not at home, they took Lakhan, for, they said, pointing out a house. Police record showed Satrughna Rabha of that house was an ULFA. None from Dhoopdhara P.S., he said, visited the house of Lakhan Rabha, may be because it was out of the way near Meghalaya border, though the police knew about the Govt's appeal to members of ULFA families to persuade their members to return to the main stream. He said that pursuant to the Govt. policy they visited some other ULFA house, but not that of Satrughna Rabha. They believed that Susu Rabha also had connection with ULFA and that was why he was wanted by the assailants, though he was a cultivator. Though he knew about Satrughna and Susu having been ULFA, no idea came to his mind as to probable consequential culprits. He knew about Sulfa Peadeep Rabha from his constable brother who said, with great difficulty he was persuaded to surrender. Peadeep Rabha's house was far away from that of Lakhan Rabha, which Peadeep could not have visited.

The I.O. Shri Talukdar denied the suggestion that police knew the culprits as the killing was centrally designed by the authorities and was executed by the SULFAs in unholy nexus with police,

and, therefore, the investigation was a mere farce and eye-wash. Wherefore no clue was allegedly found and investigation fizzled out.

In cross-examination Narapati Rabha said that the army and CRPF used to visit gheir house now and then and enquired about Satrugghna Rabha and asked the family members to persuade Satrugghna Rabha to give up path of violence and come and surrender, and that in case of failure to do so, the family would be in difficulty, to which they replied that they were unable to do so as they had no contact with Satrugghna Rabha. He further said that the Dhoopdhara police and CRPF also visited their house and spoke and forewarned in the same lines. He said that the house of Manoj Rabha @ Dristi Rajkhowa, an ULFA, was only one km away from theirs; that after Manoj Rabha's parents were killed by secret killers, their house was also was set on fire. Must be by the same persons who killed Lakhon Rabha, and that those were collaborators with the Government and Government agencies. He believed that the SULFAs were won over by the Government which conspired with them for secret killings of members of ULFA families; and that was why the investigations failed deliberately in such cases.

This case was another of its kind in Goalpara district and the contours of criminality are now prominent. From its modus operandi and it having involved an ULFA family, the Police-SULFA nexus was identifiable, though the individual perpetrators may not have been entirely from Goalpara area itself. There has been an almost permanent SULFA camp at Goalpara Town accommodating a number of SULFA leaders. There was evidence in another case that there were smaller SULFA camps under Dudhnoi P.S. in the house of Rusvelt Rabha, and at Krisnai outpost..

These have been emerging as important factors to be considered in this type of cases. Two other factors deserve consideration, With the uniformity/similarity of the cases and the suggested involvement of higher and higher authorities of the Home department, commonness of the perpetrators in some of the cases could not be ruled out. Another factor is the mobility of the SULFA members suggesting a tendency to move to Guwahati is clearly discernible, but at the same time they may not be totally ruled out from cases in their original places. In this case some of the SULFAs of Dudhnoi SULFA camp are suspected to be the perpetrators; along with some of the known SULFA camp of Goalpara...

All Govt. agencies like the Police in unholy nexus and collaborators with the SULFAs will be the accomplices.

(C) To find out whether there was any conspiracy in targeting the victims and the motive behind such killings.

This term is replied in two parts, namely, conspiracy in targeting, and motive for killing.

I. Conspiracy in targeting the victim. Conspiracy, in the context of the instant inquiry, will mean criminal conspiracy as defined in Section 126A of IPC as follows: "when two or more persons agree to do or cause to be done :-

(1) An illegal Act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the material Act is the ultimate object of such agreement or is merely incidental to that object.. Abetment of a thing. As defined in Section 107 of the Indian Penal Code (IPC)

" A person abets the doing of a thing . who-First- instigates any person to do that thing; or

Secondly- engages with one or more other person or person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, institutionally aids, by any act or illegal omission, the doing of that thing.

Explanation -1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing; or (Illustration omitted).....

Explanation -2 Whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

The law and jurisprudence of conspiracy has been discussed in para 10 of the Introductory part of this report; the same is referred to...The question whether there was any conspiracy or not in the killing of Lakhan Rabha has to be decided on the basis of the law, and facts in evidence on record. In case the answer is in the affirmative, then also the question will be as to who were the conspirators? It is in evidence that Lakhan Rabha was requested by various agencies to persuade his younger brother Shri Satrugna Rabha, who has been in ULFA, and was forewarned by the army, that if Satrugna Rabha could not be persuaded, by him, to join the peace talks and bring peace, the consequences would not be good for the family., there could be no other answer than that there was criminal conspiracy in the killing. The visits of the Army and Police could be treated as part of the course of action; and the very killing of Lakhan Rabha, therefore, be indicative of the forwarners having been a part of the conspiracy. There is evidence to show that the SULFA camp was in touch with the police. Indeed the police- SULFA nexus has been submitted in arguments by the learned counsel for the Commission, the Government, and the parties. This means that the SULFA emerged as an extra-constitutional authority. In case the SULFA were such a body of persons and were used by police either as an auxiliary, or as the striking arm, they would also be part of the conspiracy. We have already discussed that as conspiracies are often hatched in secrecy, these circumstantial evidence will be relevant and admissible. In the killing of Lakhan Rabha there were a number of persons persons in the act of kidnapping and killing, but there was also a course of conduct involving the deciders of the course of action culminating in the killing. Considering the facts of this case in light of definition of conspiracy, it can surely be held that there was a long drawn course of action amounting to conspiracy. The manner of planning and execution of the acts of kidnapping and killing shows that there must also have been some authoritative assurance of safety to the killers after the act was completed. Therefore, there was conspiracy in this case..

II. Motive. crime will bwe a crime with whatever motive it is committed It will not cease to be a crime if committed with political motive. For ascertaining the motive behind the crime, one has first to kw the person or persons who committed the crime. for his motive, immediate or ultimate, will be material.

Narapati Rabha deposed that Lakhan Rabha was picked up and killed only because of his brother Satrugna Rabha belonged to ULFA

(D) Pinpointing responsibility on prtsons involved directly or indirectly in commission of killing
This is the most difficult task of the Commission. In the absence of effective direct evidence, we have to depend on relevant circumstantial evidence. That, of course, is forthcoming in such extents as could help us in pinpointing responsibility on the persons involved. Fortunately the term of reference mentions “involved directly or indirectly in commission of killing” This enables us to act on basis of integrated evidence rather than on isolated ones. We have therefore to integrate such parts of evidence as will lead to a conclusion beyond reasonable doubt, for pinpointing responsibility. Besides what are

found in relevant pieces of evidence, the common characteristics found in each individual case also throw some light.

While answering the terms of reference in this case, we also find the following common characteristics of the first group of seven cases: so as to justify a finding of "Ulfocide, that is, deliberate killing of ULFAs, and their families and relatives, on that basis, namely:

1. That this killing involved an ULFA family, being that of Satrugna Rabha, and investigations fizzling out and ending in Final Reports (F.R)..
2. That the killing, was committed at dead of night, and the assailants invariably spoke in Assamese to awaken the inmates for kidnapping..
3. That assailants were armed with sophisticated firearms of prohibited bores, and masked with black wrappers or caps, to avoid being identified.
4. That the weapons used in killing were firearms of different sizes, bores and calibers, mostly of prohibited bores normally found in police-military situations
5. That as firearms of prohibited bores were mostly used; forensic/ballistic examination of exhibits were avoided, and investigation ultimately fizzling out.
6. That the vehicles used were never detected or taken into custody...
7. That there was no mention of police patrolling in the crime areas.
8. That the army was ubiquitous. By army we mean the armed forces of the Union deployed in Assam in aid of civil power. There was lurking evidence of Police-SULFA nexus in the killing, some of the latter being constituted into an extra-constitutional authority and used as the executioners, the *modus operandi* being to visit the family, ask members to persuade its ULFA member to surrender, failing which, to send an advance team to survey the location and structure of the house, then to send armed and masked men to the family house at dead of night, knock at the door to wake up the inmates and then drag him/them out and shoot him/them dead, or take him/them away and secretly kill and throw the bodies somewhere..
9. That there was general resentment and decry against the Unified Command Structure/ Chief Minister.
10. That there has been connivance of SULFAs; and in no killing case any SULFA has been made accused or arrested.
11. That the investigation did not commensurate with the seriousness of the crime perpetrated.
12. That modern scientific methods of investigation, finger/foot prints, dog-squads were never used.
13. That no condolence message was sent from the then Govt. of Assam to any one of the victim family.
14. That no ex-gratia/compensatory payment was made by the then Govt. of Assam in this case.
15. That in this case, there is remote-orchestrated Ulfocide, death penalty having been imposed on the victims for "status offences," of being members of ULFA or ULFA related families.
16. From this case "remote orchestration" and is evident..

These common characteristics prove remote orchestration from the apex source of conspiracy committing "Ulfocide" through its instrumentalities including unholy police-SULFA nexus using some of the latter as striking arms or executioners. Identity has already been indicated under term "B". The responsibility is pinpointed accordingly.

(E) Recommendations to prevent recurrence of such killings.

With its limited knowledge, experience and wisdom, to prevent recurrence of such killings, the Commission would like to make twofold recommendations, namely, (1) the immediate, and (2) the long term.

(1) The immediate measure is, first to try to keep in abeyance, and then gradually dismantle the existing Unified Command structure, which is neither a statute nor a statutory order, but only an arrangement agreed to by the Centre and the State Govt. regarding deployment and operation of the armed forces and other forces of the Union deployed by the Central Govt, "in aid of civil power" of the State of Assam, on request/ requisition by the State Govt. The Structure itself envisages its review after every three months,; and there is no limit to the review and may even envisage its dismantling. The parties concerned may agree to dismantle it in the same way they agreed to create it. The constitutional position as to deployment of the armed forces and other forces of the Union in a State has already been discussed in para 14 of "Part I. INTRODUCTORY." of this report and is referred to in this context. The deployment of the armed forces and other forces of the Union in the State of Assam has been "in aid of the civil power of the State." In case of the civil power of the State being sufficient enough to cope with its civil problems, *ex hypothesi*, there is no need of armed forces or other forces of the Union for the State.. The armed forces and other forces of the Union were deployed to cope with the internal disturbance thought to have been caused by the activities of the banned outfits disturbing the area leading to its declaration as a disturbed area under the Disturbed Areas Act. However, the disturbance has to a great extent been under control. The life in the State has become normal. The last Assembly election could be held without any disturbance, thanks to the co-operation of the local banned outfits. This may be an appropriate time for effective talks with the local outfits to observe cease fire, first for a short period, say six months, and for gradually longer and longer periods, and for restoration of normalcy and confinement of the armed forces and other forces of the Union to the barracks, and on continuation and assurance of normalcy, ultimately withdraw, on an assurance of peace on the part of the banned outfits and ultimately lifting of their bans themselves. To achieve this, strenuous, but cordial, talks between the outfits, the State Government and the Central Govt would be necessary; and there is no reason why such talks should not succeed. Restoration of normalcy. Disturbance and insurgent activities invited the Unified Command Structure. It is in the hands of the people to assure that peace will be maintained and insurgent activities will be curbed and normalcy will be restored. If the public are serious in this restoration of normalcy, there can be no earthly reason why such a situation cannot be brought about by mutual co-operation of the State and its people. Modalities may be worked out in consultation and cooperation among the Government, the political parties, student organizations, the outfits and the general public. Restoration of normalcy will also effect economy.. Meanwhile, in the interest of peace and tranquility, there should be no witch hunting. Constitutionally speaking, restoration of normalcy is the terminus of internal disturbances and army deployment in the State.

(2) The long term measures are meticulous observation of the provisions of the Constitution and the laws in carrying out each and every function of the government. All the departments of the Government must function faithfully in accordance with the mandatory provisions of the Constitution of India. In other words, the **long term measures** may include, in the long run, the faithful obedience to, and implementation of, the Constitution and the laws of the country, The Centre-State relationship must also be in accordance with the mandates of the Constitution. Guidance of the famous Sarkaria Commission's report will be helpful in this regard. Manusmriti said (Buller) VIII, 351. "By killing an assassin the slayer incurs no guilt, (whether) he does it in public or secretly; in that case, fury recoils upon fury." 386. "That king in whose town lives no thief, no adulterer no defamer, no man guilty of violence and no committer of assaults attains the world of Sakra (Indra)"; 420. "A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the

highest state (of bliss)" Sukracharya's *Dandaniti* is based on *danda*, meaning, punishment. Ancient sages said that without *danda matsyanyaya* will prevail and the strong will devour the weak, even the sacred *prasada* of the *yajna* will be swooped at by crows. *Danda* keeps awake when the country is asleep. All people have innate goodness in them, but some do not. In the absence of punishment those will demoralize others in the society. The norms and laws of today are not materially different. Secret killing amounts to denial of all the constitutional, legal and human rights to the killed, and violation of all these rights by the killer. If killing is by public authorities, it also means trampling over the oaths taken by them on assumption of public offices. The society need be protected from the people with such dangerous propensities. It is trite learning that every action has a reaction, fury generates fury and that brutalities generate more brutalities. Continuous disturbance of the even keel of the society and some excesses committed by some elements had to be checked by equally harsh measures, but that would not justify the lawfully established Government in abdicating its powers, duties and responsibilities to extra-Constitutional organs jeopardizing the legal, fundamental and human rights of the citizens of sovereign, socialist and democratic Republic of India.. Those who are entrusted by the people to govern them, ought to be well versed with the provisions of the Constitution of India and the relevant laws, rules, and administrative instructions, and orders framed thereunder. They should be aware of the constitutional limitations as also the rights of the citizens of the State against their State itself. Fundamental rights of citizens, including rights to life, liberty, freedoms, non-discrimination etc. must not be violated. They must never have propensity to kill the citizens they govern, secretly or openly. They must not harbour any kind of hatred or dislike on numerical, religious, communal, racial, ethnic, social, historical, or of any sort whatever. At the minimum they should be true to their oaths and be absolutely free from corruption in any form and manner..While no training course will be appropriate, considering their exalted position and prestige, periodical seminars and discussions at government levels may refresh their knowledge and experience.

The Police department is the first resort of the people for protection of their life, liberty, property etc. Spreading disaffection towards police is an offence. Everyone has the duty to help police in restoring law and order in society, provided, he is capable of doing so. There is no doubt that our Police force is one of the best in the country. To make our police still more and more efficient and instructed, some officers, by turn, may be sent for advanced training in detection and decision in modern crimes and criminal practices. Such trained police personnel may be put in the police training College. They should undergo a training course in human right and cyber and other present day crimes and crime prevention.

Regarding the SULFAs suspected, it may be appropriate to observe that because of the position in which the SULFAs found themselves, between the devil and the deep sea.. their erstwhile colleagues having been deserted by their act of surrender, they deserved adequate protection. But using their services as "guides, "spotters", trouble-shooters and cclaborators in police functions could never be viewed as proper treatment meted out to the SULFAs, far less their being used as the striking arm or the men in charge of execution. Let them now be bereft of the hallowed positions, and give them fair field and no favour, at least following the insolvency principle of allowing the declared insolvent to have a fresh start in life. How the erstwhile affected people will adore or avoid them will be a different matter altogether. Insolvency principle is not applicable to criminal law..

So far as the Government wings, agencies, and authorities, both official and political, the principle of "respondeat superior" will surely apply; and for all the lapses and misdeeds at the lower levels, higher levels authorities shall also be held liable and be subjected to proper punishments. So far as political and minister level authorities are concerned, the principle of collective responsibility may apply to all those who were forming Government in the State at the relevant period. This principle of collective responsibility will find them out wherever they happen

to be, during the period when the violation of Constitutional and legal rights of the affected citizens whose fundamental and other legal and human rights were violated during their governance. But even here the insolvency principle should be followed and the political persons also be given fair field and no favours in the ensuing political process of the State. Let there be no witch hunting of any sort. How the same affected people will accept or reject them will, of course, be an entirely different matter. Insolvency principle is not applicable to criminal matters..

(F) Any other matter related or relevant to the inquiry

Under this the Commission would like to deal with the question of compensation, ex gratia, or on some reasonable basis. We are all proud to claim that our State is a welfare State. In case of any mishap or calamity befalling any one or more of our citizens or families, the welfare State considers it to its duty to offer rescue and relief to the affected persons and families, as the case may be. It is more so when the sufferer has reasons to feel that the State itself was the immediate or even remote cause of the misery. The rendering of rescue, relief and recompense does not in any way amount to any fault on the part of the State. It is really praiseworthy of the Chief Ministers of the States to have instantly announced such reliefs and rehabilitation packages, and offer in appropriate cases employments to the surviving eligible members of the families, inasmuch as sometimes the very bread earning patriarch is lost to the family. Even the Legislature has now provided for payment of suitable "no-fault liability" irrespective of the claim for fault liability. In the instant case the bread earning patriarch of the family has been shot dead under the circumstances discussed in the case. The public prosecution may result in punishment of the culprit, but that itself will bring no financial and livelihood replenishment of the loss suffered by the survivors, including the minor children of the bereaved family. The Commission, as submitted by the learned senior counsel for the Commission and the learned Senior Government Advocate, and for the ends of distributive justice, doth hereby direct the State Government of Assam to pay to Smt. Chinu Bala Rabha wife of Shri Lakhan Rabha for the benefit of the family, a sum of Rs.5,00,000 (Rupees five lakhs) only forthwith. More than six years have already elapsed, and it brooks no farther delay..

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